TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 178.

ANDREW J. DAVIS AND CHARLES L. CLARK, PLAINTIFFS IN ERROR,

vs.

SARAH J. FREDERICKS AND WELLINGTON A. FREDERICKS.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

FILED APRIL 19, 1879.

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1 In the district court, 1st judicial district, Gallatin County, Montana Territory.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
CHARLES L. CLARK, SHERIFF, &C., DEFENDANT. } 132.

AND

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants. } 166.

Be it remembered that the said Sarah J. Fredericks having filed her amended complaint in this court against the above named defendant, Charles L. Clark, sheriff, &c., which said complaint is in words and figures following:

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS, WITH WHOM IS ASSOciated Wellington A. Frederick', her husband, as plaintiffss, plaintiffs.
versus
2 CHARLES L. CLARK AND ANDREW J. Davis, defendants.

The plaintiff Sarah J. Fredericks, for amended complaint herein, by leave of the court first had and obtained, state':

1st. That on the 8th day of March, A. D. 1875, she was, and for a long time previous thereto she had been, and now is, a married woman and the wife of Wellington A. Fredericks, her coplaintiff above named.

2. That on the 8th day of March, A. D. 1875, at the county of Gallatin and Territory of Montana, this plaintiff, Sarah J. Fredericks, was the sole and exclusive owner and possessor in her own right as sole trader of the following goods and chattels, to wit, two hundred and eighty-two sacks "XXX" (triple X) flour of the Willow Creek flouring mills make and brand, and one hundred and seven bushels of wheat and five hundred feet of pine lumber. That said flour and wheat was of the value of two thousand two hundred dollars, and said lumber of the value of thirteen ($13.00) dollars.

3. That the defendants, on the 8th day of March, A. D. 1875, while this plaintiff was the sole and exclusive owner of said property,
3 at the said county of Gallatin and Territory of Montana, without this plaintiff's consent, did wrongfully and unlawfully take said goods and chattels from the possession of this plaintiff, Sarah J. Fredericks.

4. That before the commencement of this suit, to wit, on the 31st day of March, A. D. 1875, this plaintiff demanded possession of said goods and chattels of said defendants, but said defendants refused to deliver possession of the same, or any part thereof, notwithstanding this plaintiff was then and now is entitled to the possession of the same.

5. That said defendants do now wrongfully and unlawfully withhold and detain possession of said property, goods and chattels from the possession of this plaintiff, to her damage in the sum of two hundred dollars.

Wherefore this plaintiff, Sarah J. Fredericks, demands judgment against said defendants—

1st. First, for the recovery of the possession of said property, goods, and chattels and for the sum of two thousand two hundred and thirteen dollars ($2,213.00), the value thereof, in case delivery cannot be had.

2. Second, for two hundred dollars damages and for costs of suit.

(Signed) JOHNSTON & TOOLE, AND
4 JOHN H. SHOBER,
Plaintiffs' Attorneys.

MONTANA TERRITORY,
Gallatin County, ss:

Sarah J. Fredericks, being duly sworn, says she is one of the plaintiffs in the above entitled action, and that she has heard read the foregoing amended complaint, and knows the contents thereof, and that the same is true of her own knowledge.

(Signed) SARAH J. FREDERICKS.

Subscribed and sworn to before me this 3rd day of May, A. D. 1876.

JAMES G. DOW,
Notary Public.

And the said defendant having filed in said cause his amended answer thereto, which answer is in words and figures following, to wit:

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

5 Now come the above named defendants, by their attorneys, and for answer to the amended complaint of the plaintiffs filed herein deny each and every allegation in the said complaint contained. Defendants deny that on the 5th day of March, A. D. 1875, or at any other time, at the county of Gallatin and Territory of Montana, or elsewhere, the said plaintiff Sarah J. Frederick' was the sole or exclusive owner or possessor in her own right, as sole trader or otherwise, of the goods or chattels set out and attempted to be described in plaintiffs' said complaint.

Deny that the defendants, or either of them, ever at any time wrongfully or unlawfully took said or any goods or chattels from the possession of said plaintiff Sarah J. Fredericks.

Deny that before the commencement of this suit the said plaintiff demanded of defendants the possession of said goods or chattels, or any thereof.

Deny that said plaintiff was or is entitled to the possession of said goods or chattels or any thereof.

Deny that defendants do now wrongfully or unlawfully withhold or detain possession of said property, goods, or chattels from the possession of the said plaintiff to her damage in the sum of
6 two hundred dollars, or in any other sum.

The defendants for further answer aver that on or about the 8th day of March, A. D. 1875, the said defendant Charles L. Clark was sheriff of Gallatin County, in said Territory; and that on or about the date last aforesaid, as such sheriff, the said defendant Clark, under and by virtue of two several writs of attachment issued out of the office of the clerk of the district court in said county of Gallatin, one in a case then pending in said court, wherein Andrew J. Davis was plaintiff and W. A. Fredericks and W. H. Drew were defendants, and one in a case therein pending wherein the said Andrew J. Davis was plaintiff and Wellington A. Fredericks was defendant, said writs being dated the 6th day of March, 1875, did seize and levy upon as the property of Wellington A. Fredericks, the defendant in said writs of attachment and one of the plaintiffs herein, certain goods and chattels, consisting of flour and lumber, a portion of which is attempted to be described in plaintiffs' said amended complaint, but a particular description of said property seized by said defendant as sheriff as aforesaid is attached to and endorsed on the writs of attachment aforesaid, reference being had thereto.

7 Defendants further aver that the goods and chattels so levied upon as aforesaid at the time aforesaid under and by virtue of the writs aforesaid were at the time of said levy the property of the said Wellington A. Fredericks, one of the plaintiffs to this action; and that if the said plaintiff Sarah J. Fredericks ever at any time had possession of any of said goods and chattels or of the goods and chattels set forth in plaintiff's said amended complaint, the defendants aver that such possession was a fraudulent one, and that the same were held by her for said Fredericks under cover to conceal the same from the creditors of the said Wellington A. Fredericks and to defraud the said defendant Andrew J. Davis and other creditors of said Frederick' and prevent the collection of just debts of said Davis and others against W. A. Fredericks.

Defendants deny that the said plaintiff Sarah J. Fredericks has sustained any damage whatever by reason of the acts of these defendants; and having fully answered the defendants ask to be dismissed with their costs herein expended.

T. R. EDWARDS AND
SAMUEL WORD,
Attorneys for Defendants.

8 TERRITORY OF MONTANA,
County of Lewis and Clarke, ss:

Andrew J. Davis, being first duly sworn, on his oath says that he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the facts therein stated are true of his own knowledge.

ANDREW J. DAVIS.

Subscribed and sworn to before me this May 26, A. D. 1876.
[SEAL OF 3D JUD. DIS. COURT.] ALEX. H. BEATTIE,
Clerk of the 3rd Jud. Dist. Court, M. T.,
By JNO. N. HELDT,
Deputy Clerk.

That thereafter the said plaintiff filed a replication to said answer, which is in the words & figures following:

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

9 Now come the defendants and for replication to defendants' answer herein—

1st. Deny that at the time of the levy of the attachment herein, or at any other time, Wellington A. Fredericks was the owner of, or had any interest in, any of the property mentioned in plaintiffs' complaint herein.

Deny that any of said property in plaintiffs' complaint mentioned was ever held by Sarah J. Fredericks for the purpose of covering up the same from defendant A. J. Davis or any creditor of Wellington A. Fredericks.

3. Deny that said property was ever held by said Sarah J. Fredericks in fraud of any creditors of said Wellington A. Fredericks or to hinder or delay any creditors of said Wellington A. Fredericks.

Wherefore plaintiff demands judgment as in her complaint herein prayed for.

JOHNSTON & TOOLE,
J. H. SHOBER & SANDERS & CULLEN,
Att'ys for Plaintiffs.

MONTANA TERRITORY,
Gallatin County, ss:

Sarah J. Fredericks, being duly sworn, says she is plaintiff in the above-entitled action, and that she has heard read the foregoing replication and knows the contents thereof, and that the same is true of
10 her own knowledge except as to the matters therein stated on information and belief, and as to those matters she believes it to be true.

(Signed) SARAH J. FREDERICKS.

Subscribed and sworn to before me this 27th day of October, A. D. 1876.

J. H. SHOBER,
Notary Public, M. T.

And the said Sarah J. Fredericks and Wellington A. Fredericks having commenced their suit in this court against Charles L. Clark and Andrew J. Davis by filing their complaint, the said complaint was in the words and figures following, to wit:

In first judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

The plaintiff Sarah J. Fredericks, for complaint against the above-named defendants, states: That on the 15th day of April, A. D. 1875, she was, and for a long time previous thereto had been, and
11 now is, a married woman and the wife of Wellington A. Fredericks, her coplaintiff above named.

2. That on the 15th day of April, A. D. 1875, at the county of Gallatin and Territory of Montana, this plaintiff Sarah J. Fredericks was the sole and exclusive owner and possessor in her own right, as sole trader, of the following goods and chattels, to wit: Fifteen (15) sacks choice XXX (triple X) flour of the Willow Creek flouring mill make and brand, and three thousand five hundred (3,500) shingles, and four thousand five hundred feet of dry white-pine lumber, being her separate and sole property.

That said flour was of the value of one hundred and twelve dollars and fifty cents; that said shingles was of the value of twenty dollars, and said lumber of the value of one hundred and eighty dollars.

3. That the defendants, on the 15th day of April, A. D. 1875, while this plaintiff was the sole and exclusive owner of said property, at the same county of Gallatin and Territory of Montana, without this plaintiff's consent, did wrongfully and unlawfully take said goods and chattels from the possession of this plaintiff Sarah J. Fredericks.

4. That before the commencement of this action, to wit, on the
12 20th day of April, A. D. 1875, this plaintiff demanded possession of said goods and chattels of said defendants, but said defendants refused to deliver possession of the same or any portion thereof, notwithstanding this plaintiff then was and now is entitled to the possession of the same.

5. That said defendants do now wrongfully and unlawfully withhold and detain possession of said property, goods, and chattels from the possession of this plaintiff to her damage in the sum of one hundred dollars.

Wherefore plaintiff Sarah J. Fredericks demands judgment against said defendants—

1st. For the recovery of the possession of said property, or for the sum of three hundred and twelve $\frac{50}{100}$ dollars, the value thereof, in case a delivery cannot be had.

2. For one hundred dollars damages for the detention thereof and for costs of suit.

JOHNSTON & TOOLE AND J. H. SHOBER,
Att'ys for Plaintiffs.

MONTANA TERRITORY,
Gallatin County:

Sarah J. Fredericks, being duly sworn, says that she is one of the plaintiffs in the above-entitled action, and that she has heard read
13 the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge.

SARAH J. FREDERICKS.

Subscribed and sworn to before me this 5th day of May, A. D. 1876.

JAMES G. DOW,
Notary Public.

That thereafter the said defendants filed their answer to said complaint, which said answer is in words and figures following:

SARAH J. FREDERICK', PLAINTIFF,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS,
defendants.

In the first judicial district court, within and for Gallatin County, Montana Territory.

Now come the above-named defendants, by their attorneys, and for

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

9 Now come the defendants and for replication to defendants' answer herein—

1st. Deny that at the time of the levy of the attachment herein, or at any other time, Wellington A. Fredericks was the owner of, or had any interest in, any of the property mentioned in plaintiffs' complaint herein.

Deny that any of said property in plaintiffs' complaint mentioned was ever held by Sarah J. Fredericks for the purpose of covering up the same from defendant A. J. Davis or any creditor of Wellington A. Fredericks.

3. Deny that said property was ever held by said Sarah J. Fredericks in fraud of any creditors of said Wellington A. Fredericks or to hinder or delay any creditors of said Wellington A. Fredericks.

Wherefore plaintiff demands judgment as in her complaint herein prayed for.

JOHNSTON & TOOLE,
J. H. SHOBER & SANDERS & CULLEN,
Att'ys for Plaintiffs.

MONTANA TERRITORY,
Gallatin County, ss:

Sarah J. Fredericks, being duly sworn, says she is plaintiff in the above-entitled action, and that she has heard read the foregoing replication and knows the contents thereof, and that the same is true of
10 her own knowledge except as to the matters therein stated on information and belief, and as to those matters she believes it to be true.

(Signed) SARAH J. FREDERICKS.

Subscribed and sworn to before me this 27th day of October, A. D. 1876.

J. H. SHOBER,
Notary Public, M. T.

And the said Sarah J. Fredericks and Wellington A. Fredericks having commenced their suit in this court against Charles L. Clark and Andrew J. Davis by filing their complaint, the said complaint was in the words and figures following, to wit:

In first judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

The plaintiff Sarah J. Fredericks, for complaint against the above-named defendants, states: That on the 15th day of April, A. D. 1875, she was, and for a long time previous thereto had been, and
11 now is, a married woman and the wife of Wellington A. Fredericks, her coplaintiff above named.

2. That on the 15th day of April, A. D. 1875, at the county of Gallatin and Territory of Montana, this plaintiff Sarah J. Fredericks was the sole and exclusive owner and possessor in her own right, as sole trader, of the following goods and chattels, to wit: Fifteen (15) sacks choice XXX (triple X) flour of the Willow Creek flouring mill make and brand, and three thousand five hundred (3,500) shingles, and four thousand five hundred feet of dry white-pine lumber, being her separate and sole property.

That said flour was of the value of one hundred and twelve dollars and fifty cents; that said shingles was of the value of twenty dollars, and said lumber of the value of one hundred and eighty dollars.

3. That the defendants, on the 15th day of April, A. D. 1875, while this plaintiff was the sole and exclusive owner of said property, at the same county of Gallatin and Territory of Montana, without this plaintiff's consent, did wrongfully and unlawfully take said goods and chattels from the possession of this plaintiff Sarah J. Fredericks.

4. That before the commencement of this action, to wit, on the
12 20th day of April, A. D. 1875, this plaintiff demanded possession of said goods and chattels of said defendants, but said defendants refused to deliver possession of the same or any portion thereof, notwithstanding this plaintiff then was and now is entitled to the possession of the same.

5. That said defendants do now wrongfully and unlawfully withhold and detain possession of said property, goods, and chattels from the possession of this plaintiff to her damage in the sum of one hundred dollars.

Wherefore plaintiff Sarah J. Fredericks demands judgment against said defendants—

1st. For the recovery of the possession of said property, or for the sum of three hundred and twelve $\frac{50}{100}$ dollars, the value thereof, in case a delivery cannot be had.

2. For one hundred dollars damages for the detention thereof and for costs of suit.

JOHNSTON & TOOLE AND J. H. SHOBER,
Att'ys for Plaintiffs.

MONTANA TERRITORY,
Gallatin County:

Sarah J. Fredericks, being duly sworn, says that she is one of the plaintiffs in the above-entitled action, and that she has heard read
13 the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge.

SARAH J. FREDERICKS.

Subscribed and sworn to before me this 5th day of May, A. D. 1876.

JAMES G. DOW,
Notary Public.

That thereafter the said defendants filed their answer to said complaint, which said answer is in words and figures following:

SARAH J. FREDERICK', PLAINTIFF,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS,
defendants.

In the first judicial district court, within and for Gallatin County, Montana Territory.

Now come the above-named defendants, by their attorneys, and for

answer to the complaint of the above-named plaintiffs deny each and every allegation in said complaint not herein specifically admitted or denied. Defendants deny that on the 15th day of April, A. D. 1875, or at any other time, or at any time prior thereto, plaintiff had been or was the sole or exclusive owner or possessed in her own right, or
14 otherwise, as sole trader or otherwise, of the fifteen (15) sacks of choice XXX (triple X) flour, as described in said complaint, or any part thereof, or any flour at all.

Denies that she was the owner of or seized or possessed in her own right of thirty-five hundred shingles or any shingles whatever.

Denies that she was the owner of four thousand five hundred feet of dry white-pine lumber or any part thereof, or that any part of the same was her sole or separate property.

Denies that said flour was of the value of one hundred and twelve dollars and fifty cents, or that said shingles were of the value of twenty dollars, or that said lumber is or was of the value of one hundred and eighty dollars.

Denies that on the 15th day of April, A. D. 1875, or at any other time while said plaintiff was the sole or exclusive owner of said property, these defendants wrongfully or unlawfully took said goods or chattels or any part thereof from the possession of said plaintiff. Denies that on the 20th day of April, A. D. 1875, or at any other time said plaintiff demanded possession of said goods and chattels of or from
15 defendants or that said plaintiff is or was entitled to the possession of the same or any part thereof.

Denies that defendants wrongfully or unlawfully withholds or detains possession of said goods and chattels or any part thereof, or that said plaintiff, by reason of any act on their part or either of them, was damaged in the sum of one hundred dollars or in any sum or part thereof.

Denies that plaintiff is entitled to the possession of said property or for judgment for the sum of three hundred and twelve $\frac{50}{100}$ dollars or any part thereof or for costs of suit.

The defendant further answering, avers the facts to be that on or about the 8th day of March, A. D. 1875, the said defendant Charles L. Clark was then the acting sheriff of Gallatin County, in said Territory of Montana, and that on or about the day and year last aforesaid as such sheriff under and by virtue of law separate writs of attachment issued out of the office of the clerk of the district court in said county of Gallatin and Territory aforesaid, and in a certain cause then pending, wherein Andrew J. Davis was plaintiff and William H. Drew were defendants, and the other in a certain other case then pending
16 wherein the said Andrew J. Davis was plaintiff and the said Wellington A. Fredericks was defendant, said writs bearing date the 6th day of March, 1875, did, by virtue of the authority therein contained, seize and levy upon as the property of the said Wellington A. Fredericks, the defendant in said writs of attachment, certain goods and chattels consisting of flour, shingles, and lumber, a portion of which is attempted to be described in plaintiff's said complaint for greater certainty as to the description of said property so seized by virtue of said writs of attachment as aforesaid, reference be had to the return of said sheriff on said attachments. Defendant further avers that the goods and chattels so levied upon as aforesaid at the time aforesaid were at the time of such levy and seizure the property of the said Wellington A. Fredericks, one of the plaintiffs to this action, and subject to be seized and taken on attachment as security for said Wellington A.

Fredericks' said debts and demands, and if the said Sarah J. Fredericks ever at any time had possession of said property or any part thereof, or of the goods and chattels set forth in plaintiff's complaint.

17 Defendants aver that such possession was a fraudulent one, and that the same were held by her for said Wellington A. Fredericks under cover of some false and pretended claim of right or title to cover up and conceal the same from defendant Davis and other creditors of her said husband, the said Wellington A. Fredericks, and to hinder and delay and defraud said defendant and the other creditors of the said Wellington A. Fredericks and to prevent the collection of their just debts and demands.

Defendant, further answering, avers that on and prior to the year A. D. 1873 the said Wellington A. Fredericks was wholly insolvent, and amongst other creditors was justly owing this defendant A. J. Davis in divers and sundry large sums of money, amounting in the aggregate to the sum of eight thousand dollars, to secure a part of which sums the attachments aforesaid were issued as aforesaid, and was then the legal and equitable owner of an undivided one-half of that certain grist mill or flouring mill situate on Willow Creek, in the county of Gallatin, Territory aforesaid, together with one-half of the mill site or grounds belonging to the same, also to one-half of the water rights, ditches, and flumes pertaining thereto, and for the purpose of hindering, de-

18 laying, and defrauding his said creditors, caused the same to be conveyed to the said Sarah J. Fredericks for a false and pretended consideration, not a dollar of which was paid by the said Sarah J. Fredericks. That she has ever since and now holds the naked legal title to said property, the said Wellington A. Fredericks at all times since managing and controlling the same as his own property, receiving and appropriating the profits and proceeds thereof to his sole and exclusive use and benefit, and that all the said property, goods, and chattels described in said complaint is and was derived from the profits and proceeds of said mill, and is and was at the time of said levy and seizure the property of the said Wellington A. Fredericks, and subject to be seized and attached for the payment of his said debts.

Affiant further avers the facts to be that the so-called sole tradership of the said Sarah J. Fredericks is and was a trick and fraudulent device on her part for the more effectually hiding, covering up, the property of the said W. A. Frederick', and whatever pretended title she may have acquired to said property she only holds the same in trust for the sole use and benefit of the said Fredericks.

SAMUEL WORD, R. T. VIVION.

19 THOS. EDWARDS AND JAS. G. SPRATT,
Defendants' Attorneys.

TERRITORY OF MONTANA,
County of Gallatin, ss:

A. J. Davis, being first duly sworn, on his oath states that he is one of the defendants in the above-entitled action; that he has heard the foregoing answer read, and that the facts therein stated are true of his knowledge.

A. J. DAVIS.

Subscribed and sworn to before me this October 27th, 1876.
THEO. MUFFLY, *Clerk.*

That thereafter the said plaintiffs filed their replication to said answer, which said replication is in words and figures following, to wit:

Replication.

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

Now comes the plaintiff Sarah J. Fredericks, and for replication to the answer of defendants herein—

1st. Denies that any of the property mentioned in plaintiffs' complaint was the property of Wellington A. Fredericks, and denies that Wellington A. Fredericks ever had any interest in any of said property.

2. Denies that said Wellington A. Fredericks ever had any interest in the grist mill in defendants' answer described, nor the water right, machinery, privileges, nor appurtenances thereto belonging.

3. Denies that said Wellington A. Fredericks, for the purpose of hindering, delaying, and defrauding any of his creditors, he caused the legal title of the one-half of said mill, machinery, and appurtenances to be vested in the said William H. Drew; and denies that he caused it to be held by him in trust for the use nor benefit of him the said Wellington A. Fredericks, for any purpose whatever; and denies that the said Wellington A. Fredericks ever had any title, legal or otherwise, to said property vested in himself or any one else.

Denies that said Wellington A. Fredericks caused the said Wm. H. Drew to convey the legal title to said one-half of the said mill
21 property to this plaintiff with the understanding between them that the same should be held by this plaintiff in trust for his, Wellington A. Fredericks', sole or exclusive use or purpose, and denies that there was any understanding between said Wellington A. Fredericks and said William H. Drew in relation to said mill property; and denies that this defendant accepted any conveyance nor trust for the purpose of nor with the intent to hold said property for the use or benefit of the said Wellington A. Fredericks, nor for the purpose of covering up, hindering, nor secreting the same from the creditors of the said Wellington A. Fredericks, nor for the purpose of hindering, delaying, nor defrauding them in any manner.

4. Denies that the said Wellington A. Fredericks has ever managed, used, nor controlled the said property, nor the benefits, profits, nor proceeds arising from the same, nor any portion thereof, in any manner whatever.

5. Denies that any of the property attached by the said Charles L. Clark was, at the time of the levy of the writ of attachment, nor at any other time, the property of the said Wellington A. Fredericks, and denies that the property mentioned in plaintiffs' complaint was the proceeds of said mill, and denies that the proceeds of said mill ever were
22 subject to attachment nor seizure as the property of said Wellington A. Fredericks; and denies that said Wellington A. Fredericks ever had any attachable interest in any of the property in plaintiffs' complaint mentioned; and denies that said Wellington A. Fredericks ever had any attachable interest in said mill mentioned in defendants' answer herein; and denies that he ever owned any interest in said mill.

6. This plaintiff denies that for any fraudulent purpose she filed her declaration of intention of being a sole trader.

7. Denies that under any false nor fraudulent practice that she has pretended to own, control, nor manage any of the property of Wellington A. Fredericks, but avers the fact to be that she has only sought to manage and control her own individual and sole property, and to protect herself in her own individual and sole property and rights.

8. Denies that she has permitted, at any time, the said Wellington A. Fredericks to manage nor control any of the property in her complaint herein mentioned, nor any of the property in defendants' answer herein mentioned, as his own property.

9. Denies that she has permitted the said Wellington A. Fred-
23 ericks to apply any of the proceeds nor profits arising from any of said property to his own use nor purpose.

10. Plaintiff denies each and every allegation in defendants' answer not hereinbefore specifically denied, except that the attachment was duly issued.

Wherefore plaintiff prays judgment, as in her complaint herein prayed for.

JOHNSTON & TOOLE,
CULLEN AND SANDERS AND J. H. SHOBER,
Att'ys for Plaintiff.

TERRITORY OF MONTANA,
Gallatin County:

Sarah J. Fredericks, being duly sworn, says she is one of the plaintiffs in the foregoing-entitled action, and that she has heard read the foregoing replication and knows the contents thereof, and that the same is true of her own knowledge except as to the matters therein stated on information and belief, and as to those matters she believes it to be true.

SARAH J. FREDERICKS.

Subscribed and sworn to before me this 15th day of December, 1876.

GEORGE L. DUKE,
Justice of the Peace.

24 That thereafter, to wit, on the 11th day of May, A. D. 1877, and at the May term, 1877, of this court, an order was made therein consolidating the two foregoing actions.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
CHARLES L. CLARK ET AL., DEF'TS. } Consolidated with case No. 4. (132.)

Come as well the said plaintiffs by Messrs. E. W. Toole and John H. Shober, esq'r's, their counsel, as the said defendants by Messrs. R. P. Vivion, T. R. Edwards, James G. Spratt, William Chumasero, and A. M. Woolfolk, esq'r's, their attorneys. Whereupon by consent of counsel it is ordered here by the court that this cause be and the same is hereby consolidated with cause No. 4 (132), entitled Sarah J. Fredericks against Charles L. Clark, sheriff, &c.

These causes thereafter were proceeded with in said court under the title of the cause of Sarah J. Fredericks and Wellington A. Fredericks, as plaintiffs, vs. Charles L. Clark and Andrew J. Davis, defendants.

On appeal the defendants submit the following statement:

25 SARAH J. FREDERICKS ET AL.
(132) *vs.*
CHARLES L. CLARK, SHERIFF,

AND

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks
vs.
CHARLES CLARK AND ANDREW J. DAVIS.

PLAINTIFFS' TESTIMONY.

SARAH J. FREDERICKS. Known Davis since '66, and Clark since '75. I am engaged in milling and blacksmithing, as sole trader, since spring of 1874. (Here witness produced and identified her sole-trader papers, to wit:)

Declaration of the intention of Sarah J. Fredericks, a married woman, to transact business in her own name as sole trader.

Know all men by these presents that I, Sarah J. Fredericks, a married woman, residing with my husband at Gallatin City in Gallatin County, Montana Territory, being desirous of availing myself of the benefits of an act of the legislature of the said Territory of Mon-
26 tana, entitled "An act to authorize married women to transact business in their own names as sole traders," approved February, 1874, do hereby make and publish, and by these presents give notice unto all persons concerned or in anywise interested, that this my declaration of intention of transacting business in my own name as sole trader is made under the provisions of said act, and that from and after the date of the proper record of this declaration, it is bona fide my intention to carry on and transact the business of a flour manufacturer and miller; and that it is further my intention to also carry on and transact the business of a stock raiser, owner and grazer; also a general blacksmithing business, and furthermore follow and pursue, carry on and transact in my own name and for my own use and benefit and for the benefit of my children or any member of my family who may be dependent on me for support and maintenance, any other business, calling, avocation, profession, or pursuit in life which I may at any time find it necessary to enter upon or engage into for the purpose, and for the proper support and maintenance of those who may be dependent
27 upon my exertions for their means of livelihood.

I furthermore make known and declare that the original amount of capital which I have invested in the aforesaid business does not exceed the sum of ten thousand (10,000) dollars, nor was the same derived from any funds belonging to my husband.

In testimony whereof witness my hand and seal this twenty-eighth day of March, A. D. 1874.

SARAH J. FREDERICKS. [SEAL.]

TERRITORY OF MONTANA,
County of Gallatin, ss:

On this 28th day of March, A. D. 1874, personally came before me, Robert W. Hill, a notary public in and for Gallatin County, Montana

Territory, Sarah J. Fredericks, to me well known to be the person who executed the foregoing instrument, and acknowledged that she executed the same freely and voluntarily, and for the uses and purposes therein set forth.

In testimony whereof witness my hand and official seal the day and year first aforesaid.

ROBERT W. HILL,
Notary Public.

{ R. W. HILL, NOTARY SEAL, MONTANA. }

28 Received for record March 30th, 1874, at 4 o'clock p. m. and recorded in Vol. "I" of deeds, pag', 441; fee $3.00.

[GALLATIN CO. SEAL.] ARCH. GRAHAM,
Recorder.

Know the property mentioned in complaint; I held same as sole trader; defendant Clark, as sheriff, took the same from me. The value of the lot attached on March 7, per sack, was $7.00; 15 sacks afterwards attached was $7.50 per sack; the lumber was worth 2 cents per foot; I never knew that the lumber was sold; I forbid them taking the property, as I claimed the same was my own, also same as to Reeves, who claimed to be deputy sheriff. The first lot of flour was worth $7.00 per sack, the last lot attached was worth $7.50 per sack. There was also about 5,000 feet of lumber taken from my possession worth $30.00 to $40.00 per thousand. There was also taken by defendant Clark 3,500 shingles; they were worth $5.00 per thousand; also 107 bushels wheat worth $2.00 per bushel. All of the flour, lumber and shingles were in my possession when levied upon and taken. I forbid the taking of said property at the time and demanded possession of it from defendant Clark several times afterwards and previous to commencing suit.

Cross-examined by def't's:

29 I got the lumber from Drew; Drew owned the saw-mill; I bought the lumber in 1874; it was attached in 1875; I acquired some of the flour by purchase; it was ground at the Willow Creek mills.

Question. When did you get the flour?

(Objected to by plaintiffs as irrelevant, which objection was by the court sustained.

To the sustaining of the said objection and the ruling of the court thereon defendants at the time excepted.)

Question. State how and in what manner you acquired title and possession to the flour described in complaint?

(Objected to as irrelevant by plaintiff, and objection sustained and the witness not allowed to answer same.

To which ruling in sustaining said objection defendants at the time excepted.)

Question. Was or not this flour in controversy the proceeds of toll of said Willow Creek mills for the years 1873 & 1874?

(Objected to by plaintiffs; which objection was by the court sustained and the witness not allowed to answer.

To the ruling of said court as aforesaid defendants at the time excepted.)

30 Question. Was any portion of said flour the proceeds of said mill during the existance of lease dated November 14,

1873, from defendant Davis to W. A. Fredericks, or at any other time?

(Objected to by plaintiff as irrelevant; which objection was by the court sustained, and to which ruling defendants at the time excepted.)

Question. Do you know of any one else claiming that flour or any part of the same?

(Objected to by plaintiff as irrelevant; which objection was by the court [sustained] *overruled.*

To the ruling of said court in sustaining said objection and in refusing to allow said witness to answer said interrogatory defendants at the time objected, excepted.)

Did any one else other than yourself claim possession of the flour mentioned or in controversy at or the time of the levy of the attachment?

I was not aware that any one did at the time of the levy.

Did you get Mr. Greene to claim said flour at the time of the levy?

(Objected to by plaintiffs; which objection the court sustained and refused to allow the witness to answer. To which ruling the defendants at the time excepted.)

31 Did you not at or before the levy get Mr. Greene to so claim said flour?

(Objected to by plaintiff; to which objection the court sustained and refused to allow the witness to answer. To which ruling the defendant at the time excepted.)

State whether any of this flour so levied upon by the sheriff was from the proceeds of grain purchased by you or was proceeds of grain owned in whole or in part by your husband.

(Objected to by plaintiffs; which objection the court sustained and refused to allow the witness to answer. To which ruling the defendant at the time excepted.)

Plaintiff closed in chief.

Defendant CLARK was here introduced as a witness.

Mrs. Fredericks told me she claimed part and that Granniss claimed 200 sacks of flour; she did not say how much Greene owned nor how much she owned; James Greene presented me an affidavit claiming 200 sacks of the flour attached, which affidavit was here introduced and admitted; I attached 496 sacks on March 8, 1875; of this number I returned to John W. Granniss 201 sacks on his affidavit
32 of ownership; other flour was delivered to other parties who claimed; 2 sacks were stolen from me; one sack was returned to the plaintiffs; so making of this 496 sacks I attached, I sold at public auction 280 sacks.

Copy of sheriff's return on attachment.

I, C. L. Clark, sheriff of Gallatin County, Montana Territory, hereby certify and return, that by virtue of the writ of attachment hereunto appended I did, on the 8th day of March, 1875, levy upon as the property of the said defendant W. A. Fredericks the following described property, to wit:

The one equal and undivided half of the Willow Creek grist or flouring-mill, situate on Willow Creek, on section number seven (7), township numbered one (1), south of range numbered one (1), east of the lands granted to the North. Pacific Railroad Company by the United States, together with the equal one-half of all and singular the tene-

ments, hereditaments and appurtenances, as well as the one-half of all the mill-dams, races, flumes, fixtures and machinery thereunto belonging or in any wise appertaining; also 498 sacks of flour, a quantity of wheat, bran, shorts, and all the tools and other property in the
33 building claimed or owned by the said defendant; also a pile of lumber, 500 feet more or less, lying close to the mill; also the frame dwelling-house situate and lying in Gallatin City, Gallatin County, together with the land upon which the house is situated, and the log house occupied by J. H. D. Street, and all other improvements upon said land claimed and owned by said defendant Wm. A. Fredericks.

Witness my hand this the 9th day of March, A. D. 1875.

C. L. CLARK,
Sheriff.

List of property attached by virtue of the writ of attachment hereunto appended, to wit:

One blacksmith's forge, one bellows, one anvil, one vice, two screw-plates, hammers, tongues, coal' chisels, one handsaw, blacksmith's chest, one diamond plow, thirty bushels of charcoal, more or less, one lot of horseshoes (new) and lot of iron, one dirt-scraper.

Witness my hand this the 20th day of March, A. D. 1875.

C. L. CLARK,
Sheriff of Gallatin County, M. T.

I attached in all about 3,000 feet of lumber, more or less, and about 3,000 shingles. The lumber was worth about $25.00 per thousand feet, and the shingles about $2.50 per thousand. I know I bought shingles at that price.

34 Defendant DAVIS was here introduced, and testified as follows, to wit:

About March 20th, 1875, flour was worth about $6.00 per sack at Willow Creek mills, and at the time of sale flour was worth at wholesale about $5.50 per sack, and at retail was worth about $6.00 per sack; the lumber attached was refuse, and was odds and ends left over from building of the mill and had been picked over. It was probably worth $25.00 per thousand feet; the shingles ought to be worth there about $3.50 per thousand. I was present at the time of the attachment, and there was in the mill about 480 sacks of flour. I heard the plaintiff (Mrs. F.) say that the flour in the lower story was Granniss'es. I don't remember that she said she owned any of the flour. She said the flour inside belonged to other parties, and mentioned Granniss; that Granniss owned 200 sacks. I don't know that she stated how much belonged to Greene. I owned ½ of the Willow Creek mills, and W. A. Fredericks owned the other half, and held it in his wife's name. A short time before the levy I was at the mill, and talked to both Mr. and Mrs. Fredericks. Mr. F. went with me to the mill, as I wanted to see how much toll I had, and I could only find about 100 bushels of wheat. I asked if I had any flour from my toll. He gave
35 me no satisfaction. They proposed to buy my interest in the mill with flour that belonged to others; they told me that my toll was stolen by Mood; they would not show me the books; said they were going to Bozeman, and would bring the books with them. Soon after I saw them at Bozeman, and asked them if they had brought up the books; they answered by asking what I would take for my in-

terest in the mill in flour. I charged them with having stolen my wheat and ground it into flour; they did not deny it.

Cross-examined:

I came here in July, 1865, for the purpose of looking at the country and finding a market for goods I had on a train coming to the Territory. I received no proceeds of sale of flour at public sale at time of sale of the flour attached. Flour was worth less in May than April, 1875. I did not charge Mr. Mood with stealing the flour, nor have I ever written any letter indicating any such thing. I think the flour brought from $5.35 to $6.00 per sack. This, or the most of this, lumber came from the Fredericks & Drew mill; at least this is what both told me. Drew told me that the shingles came from his mill. The man that bought this flour conveyed it to Helena, and lost money on
36 it. I believe there was no more than 6 or 8 thousand shingles levied upon. Mr. Fredericks had the key of the mill and refused to let me in the mill where the flour was stored. Mrs. Fredericks told me that she intended to take out or file papers as a sole trader, as Thomas was watching Mr. Fredericks with intention of levying upon his property to satisfy a judgment; that either Toole or Street had advised her to do so. Mr. Fredericks & Mr. Drew owned one-half of the mill at the time I leased my half to Fredericks. I never sold to Mrs. Frederick, but did convey without consideration to her the old Ault mill that stood above Fort Ellis, and that was afterwards removed to Middle Creek. I never saw the deed transferring the saw-mill from Mrs. Fredericks to Drew, and Drew's interest in grist-mill to Mrs. Fredericks; but both told me this had been done, and so Fredericks informed me. I don't know that she ever told me in Helena that she was going to take out sole-trader's papers. As to the sale of flour at the Willow Creek mill I do not remember that I directed the sheriff to sell, or that I directed my attorneys to have it done. I don't know who hauled the flour so sold by the sheriff to Helena. I did not have anything to do with the flour after it was sold.

Redirect examination:

37 At the time of the sale of the flour, it was difficult to get transportation, because of bad roads. It was lower than in March. In 1870 or 1871, I conveyed to Mrs. Sarah J. Fredericks the undivided one-half of the Ault saw-mill, it being the same interest held by me for Mr. W. A. Fredericks. Mr. Ault was owing myself and Mr. Fredericks jointly. Mr. Ault gave me a mortgage in my name to cover the entire debt. This mortgage I foreclosed and purchased the property for myself and Mr. Fredericks and held it in my own name. Afterwards Mr. Fredericks requested me to convey his half interest in the property to his wife, which I did without any consideration whatever, passing from Mrs. Fredericks. I conveyed my half interest in the saw-mill to W. H. Drew. In relation to the building of the Willow Creek grist mill, I was to furnish all the machinery and be one-half owner of the same. Mr. W. A. Fredericks and W. H. Drew were to furnish all other material; build the mill and be joint owners of the other half. Near the completion of this grist-mill Mrs. Sarah J. Fredericks conveyed Mr. W. A. Fredericks' interest in the saw-mill, so held by her in her name, to W. H. Drew, in consideration of which W. H. Drew conveyed his interest in the grist-mill to Mrs. Sarah J. Fredericks. There was no con-
38 sideration save the exchange as above. This contract was made between W .A. Fredericks and W. H. Drew in my presence at my house in Helena in the spring of the year 1874; afterwards, Mr. Fred-

ericks had possession of the grist-mill and retains possession of the same and now manages and controls the same.

Recross-examination:

I was, I believe, at the mill in Feb'y, 1874, and stayed over night. Fredericks was in possession of my half of the mill under lease. I don't think the lease and exchange of interests by Fredericks and Drew were made at the same time. I am not able to state.

Re-examination:

There was no consideration from Mrs. F. to me for conveying F's. interest in saw-mill to her.

CLARK recalled in chief:

Fredericks had possession of the grist-mill when I attached the flour; 498 sacks I attached; I sold 280 sacks; 201 sacks were delivered to Grannis on his affidavit; 5 sacks were delivered to another party upon his affidavit; 2 sacks were stolen from my possession; 8 sacks to Mr. Finsley on his receipt; 282 sacks were stolen from me
39 at the mill after the levy, and I found all in Mrs. Sarah J. Fredericks' house. I have since refreshed my memory as to price of flour at the time and it was worth $5.25 per sack of 100 pounds.

Cross-examined:

I sold 280 sacks of flour at public sale at my own instance; I sold April 17, 1877; have talked to defendant Davis about it, and he gave me an indemnity bond. I gave Mrs. F., by consent of Davis, one sack of the 498 sacks of flour. Davis' attorneys drew the bond and obtained the signatures to it and gave it to me. Davis' name is not to the bond

W. V. RYAN. I know the Willow Creek mill, and Mr. F. constructed it. I owned the ground and Mr. F. contracted with me for the ground on which to build the mill. He was building the mill, and afterwards him and Davis was to build; Davis to furnish the machinery and F. to build and furnish the lumber, and he has been there in possession ever since.

Cross-examined:

Mrs. F. now lives at the mill. I have been at the mill in the interest of Davis and in possession of his half. Mrs. F. claimed to own one-half and claimed all the flour attached.

40 Re-examination:

I was there in the fall of 1875, in the interest of Davis, and the mill was built in 1873.

Recross-examined:

I don't know when Mrs. Fredericks first claimed interest in the mill.

MARSHALL CORSIEN. In March, 1875, Mr. and Mrs. Fredericks asked me to store some flour, as they thought Mr. Davis wanted to attach it. In last of February or 1st of March, 1875, Mr. Fredericks wanted me to take some flour. I told him I could not; that I was too poor. He said Mrs. Fredericks would hand me the money, and I could return it to her. This was flour then at the Willow Creek mill.

Cross-examined:

They never told me whose flour this was.

C. W. HASKINS. I knew Mr. and Mrs. F. before March 8th, 1875.

Rebuttal by plaintiffs.

ELLISON. Know Mrs. Fredericks since spring of 1874 at Wil-
41 low Creek mill. She bought some wheat in 1874. I know she bought 3 or 4 lots of wheat of Deep Creek and Boulder. Of this amount all that I stored was stored upstairs on floor of mill. Mill started up somewhere in last of July or 1st of August, 1874. I don't know how the wheat was tolled in respect to her wheat. I know that there was in July, '74. I hauled after I went there about 4,000 feet.

Cross-examined:

I was used for different purposes around the mill. Mr. Fredericks did the work. Mrs. Fredericks hired me, and I looked to her for the money. I knew nothing about the ownership except what she told me. I knew of her selling flour to Lane. This was about the time Granniss was there. It was 2 loads that I know of. He paid Mrs. Fredericks for the flour in presence of Bill Ryan. I saw Mrs. Fredericks with the money first. My understanding was, if my eyes did not deceive me, that Mike Lane got the money from Mrs. Fredericks, and he gave it back to her in 15 minutes, in presence of Mr. Ryan. I went to work there in fall of '75, and continued there until some time in 1875.
42 I heard that Mrs. Fredericks was to give Lane the money, and he was to give it back to her. The first load he hauled was about 20 sacks; it may have been 15 sacks.

Re-examination:

I think this was in the fall of 1875. I don't know whether it was after the attachment.

JOHN W. GRANNISS. I was employed at Willow Creek mill in fall of '74 as miller. Mrs. Fredericks had wheat there then, up-stairs in a bin, that she claimed as her own. There was some toll wheat put in with it. Her toll was then put in. I ground the wheat, and as thus ground was placed in the northeast end of the mill, and this flour was attached.

Cross-examined:

I ground out of this bin. I ground 200 sacks of flour. I can't say how this bin of wheat was accumulated. While I was there Mr. Fredericks put her principal toll in this bin. I saw toll wheat in sacks; don't know to whom it belonged, and don't think any of it was ground with the bin wheat. There was other flour in the mill, and I don't know from what wheat it was ground. Must have been 500 sacks flour
43 in mill when I left and some wheat. This 500 sacks included the 200 I had there in the mill. All the wheat ground while I was there was tolled; one-sixth bushel is the amount toll taken. I was there a few days in the middle of March, '75. Davis' toll was kept separate, and not mixed with Mrs. Fredericks'.

MIKE LANE. Mrs. Fredericks has carried on the mill as sole trader 3 or 4 years. I don't know of her buying any wheat in fall of 1874. I was in employ of Mrs. Fredericks in 1874, and maybe in 1875. There was wheat in the mill of '74 that Mr. Fredericks said was the woman's toll. At the time I bought the flour referred to by Allison of Mrs. Fredericks, Allison was working there, and it was several months after the flour in controversy was attached. It was no part of this flour I purchased.

J. V. RYAN. I was at the mill in Sept., '75, in the employ of Davis. It was along in the winter of '75 that Lane got the flour referred to by Allison; it was several months after the attachment.

44 WATTS. Know Mrs. Fredericks since 1873. She has been in the milling business. She bought wheat in March, 1875. I was called on about April 15, '75, to help Mr. Fredericks measure the lumber, and I think there was 5 or 6 thousand feet; there was 17 bunches of shingles. I knew she was purchasing wheat on her own account as sole trader in March, 1875, and I sold her some. I know she ground it into flour, and the flour was in the mill.

(Motion to strike out testimony as to lumber was sustained.)

Mrs. FREDERICKS. I was living on Willow Creek when I got out my sole trader's license. I talked with defendant Davis about it at Helena and Willow Creek mill, and consulted with Toole about at request of Davis. The wheat in the bin upstairs I got from several parties, viz: Mr. Hartman, James Harper et al., Dr. Franur, Mr. Watts, and another; all this amounted to 700 bushels of wheat. Of this Granniss ground 202 sacks, and balance by Fredericks. I first obtained my deed to my interest in the Willow Creek mill on March 31st, 1874. (The deed is here admitted in evidence.) I was plaintiff in an action to determine my title in this property.

45 (The pleadings in title case are here introduced and objected to, and objection overruled, and ruling excepted to.

Contract between Davis and Drew in building the Willow Creek mill was offered; objected to; objection overruled, and to ruling defendants excepted.)

This Lane flour was sold in November, 1875.

Cross-examination:

First attachment was issued on March 8, 1875. Hartman, 25 bu.; Do. Franse, 63 & 14 bu.; from Deep Creek, 50 bu., and again 550 from another gentleman; Harper, 10; Watts, 58$\frac{5}{3}$ bu. I paid for all this wheat in my own money. I am blacksmithing. Mr. F. does the work and I pay him. I borrowed the money from W. L. Perkins, $500.00. I paid $1.00 per bu. for wheat cr. & 1.25 for bal'c. I borrowed the money about July 1, 1874. Sold my toll and repaid it in 1875; about 160 sacks of my toll. I sold my toll principally to Kleinschmidt. Mr. Hall may have got a few sacks. I have told you where and how I got all of this flour; it was from the wheat purchased by me in May, 1874. I purchased 25 bushels from Hartman, six and one-half sacks of flour of Tickney. In June, 1874, I purchased 50 bushels of Chrisman, and 550 bushels of Drainsky, from Deep Creek, which delivered some

46 time in the fall of 1874, in different parcels. I purchased 30 bushels of Defrane, and some other small lots of different parties. This is how I got title to and possession of the flour sued for in this action. No part of it was tolls of 1873 or 1874, and no one had any interest in it except myself. None of said flour was proceeds of the mill during the existence of Fredericks' lease. He always took his own flour and disposed of it himself. I do not know what he did with it. I controlled my own and tried to keep Davis from getting hold of it. I contracted to sell Green some flour, but it was attached before delivery, and the contract fell through. I knew of no one claiming possession or the right of possession to any of the flour attached but myself.

I never got any one to claim possession of it. None of the flour was from grain owned by my husband. I have told you how I got all of it two or three times.

Deed.

Know all men by these presents that we, William H. H. Drew and Annie Drew, his wife, of the county of Gallatin, in the Territory of Montana, in consideration of the sum of $2,000.00 (two thousand dollars), to them in hand paid by Sarah J. Fredericks, of the said
47 Gallatin County, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, remise, release, and quitclaim unto the said Sarah J. Fredericks, and to her heirs and assigns forever, the following described real estate, situate in the county of Gallatin, in the Territory of Montana, to wit:

One undivided one-half of a certain flouring mill, situate at the upper end of Lower Willow Creek Valley, on the northeast quarter of the southeast quarter of section seven, township one south, of range east, together with the same half interest in and to all the tools, implements, water rights, mill-dams, and all the appurtenances thereto belonging or in any wise appertaining; also the whole of the dwelling-house situate on the said mill ground, with all the tenements, hereditaments, and appurtenances thereunto belonging; and also all the estate, right, title, interest, claim, and demand whatsoever, in law or in equity, of the said William H. H. Drew and Annie Drew in and to the said premises and the appurtenances, to have and to hold the same unto the said Sarah J. Fredericks, her heirs and assigns, forever.

48 In witness of which we have hereunto set our hands and seals on the thirtieth day of March, A. D. 1874.

WM. H. H. DREW. [SEAL.]
ANN DREW. [SEAL.]

TERRITORY OF MONTANA,
County of Gallatin, ss:

On the thirteenth day of March, A. D. 1874, personally came before me, the undersigned, notary public within and for said county, W. H. H. Drew and Ann Drew, his wife, to me known to be the persons described in and who signed the foregoing conveyance as grantors, and acknowledged that they had executed the same freely and voluntarily for the uses and purposes therein expressed. And the said Ann Drew was made acquainted with the contents of said conveyance and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness of which I have hereunto subscribed my name and affixed my seal on the thirteenth day of March, A. D. 1874.

[L. S.] J. J. DAVIS,
Notary Public.

49 Received for record March 31st, 1874, at 4 p. m., and recorded in vol. "I" of deeds, at page 444.

Fees, $2.50; paid, $2.50.

ARCH. GRAHAM,
Recorder.

In the district court, first judicial district, Gallatin County, Montana Territory.

SAHAH J. FREDERICKS, PLAINTIFF,
vs.
ANDREW J. DAVIS AND CALEB GILBERT, defendants.

1st. Now comes the plaintiff in the above-entitled cause and states that she is a married woman and as such seized and possessed in her own right and of her sole and separate property of an undivided one-half of the premises hereinafter mentioned; that the said defendant, Andrew J. Davis is the owner of the undivided other half thereof, and that the same is held, occupied, and possessed by said plaintiff Davis as tenants in common, and that no other person has any interest therein save said Gilbert, who holds a mortgage of record for about $4,000.00.

2. That said property is known and designated as a certain
50 flouring mill situate at the upper end of lower Willow Creek valvey, on the northeast quarter of the southeast quarter of section seven, township one south, of range one east, with all the tools, implements, water rights, mill-dam, and all the appurtenances thereto belonging or in anywise appertaining, all in the county of Gallatin and Territory of Montana.

3. That said plaintiff and defendants are not interested in any other real or personal property, as tenants in common or otherwise, jointly in the Territory or elsewhere.

4. That plaintiff is desirous of having partition or sale made of said property, and that plaintiff verily believes, and therefore avers, that partition or division thereof cannot be made according to the respective interests of the parties therein without great prejudice to the owners thereof.

5. And the said plaintiff, for further cause of complaint, shows unto this honorable court that since the 15th day of December, A. D. 1873, and at the present time, there has been no settlement or accounting between this plaintiff and said defendant Davis for or on account of divers and sundry sums of money, labor, and material by them
51 and each of them laid out and expended in and about preserving, operating, and taking care of said mill, mill-dam, water right, and property, and that during said time said defendant Davis became and is indebted to this plaintiff for and on account of money, work, and material paid, laid out, and expended in and about improving and operating said property in the sum of about six thousand five hundred dollars, the one-half of which sum is $3,250.00, now coming to plaintiff by said defendant Davis over and above all just claims or demands of said defendant Davis; that said amount was necessary to be expended as aforesaid and upon said property, and that the same added greatly to the value thereof.

Wherefore plaintiff prays this hon. court that said property and the whole thereof be sold according to the rules and practice of this court and the law applicable thereto; that the proceeds thereof, after paying the costs and expenses of sale (whatever amount), be returned unto this court, and that the same be divided and paid over to the parties hereto in accordance to their respective rights and interests in the premises; that an accounting be had between this plaintiff and said defendant Davis, and the amount found due plaintiff be paid out
52 of the proceeds of said sale as in equity and justice it should be,

and that judgment therefor be given accordingly, and that plaintiff have such other or further relief as may be just and equitable.

SHOBER AND JOHNSTON & TOOLE,
Attorneys for Plaintiff.

TERRITORY OF MONTANA,
County of Gallatin, ss:

Sarah J. Fredericks makes oath and says that she is the plaintiff herein; that she has heard the foregoing complaint read and knows the contents thereof, and that the matters therein stated are true of her own knowledge except as to such matters as are therein stated on information and belief, and as to those matters she believes it to be true.

SARAH J. FREDERICKS.

Subscribed and sworn to before me this 16th day of March, A. D. 1875.

D. H. KITCHAM,
A Justice of the Peace in and for Gallatin County, Montana Territory.

Filed March 15th, 1875.

W. T. DAVIS, *Clerk.*

53 In the district court, first judicial district, county of Gallatin, Territory of Montana.

ANDREW J. DAVIS, PLAINTIFF,
vs.
WELLINGTON A. FREDERICKS, DEFENDANT.

And now comes the above-named plaintiff, by leave of the court first had and obtained, and, complaining of the above-named defendant, avers that heretofore, to wit, on the 14th day of November, A. D. 1873, at the county of Gallatin, in the Territory of Montana, the said plaintiff was the owner and in the actual possession of an undivided one-half of a certain flouring and grist mill, situate on what is known as Willow Creek, in the said county of Gallatin; that on the day aforesaid the said plaintiff and the said defendant entered into a contract, in writing, whereby the said plaintiff leased to the said defendant the said undivided one-half of said mill and the appurtenances for the term of one year from the aforesaid date, which said written contract was duly executed by the said plaintiff and the said defendant; that by the terms of the said contract the said defendant, in consideration of the
54 covenants and agreements on the part of said plaintiff contained in the said contract or lease, undertook and agreed to pay and deliver to said plaintiff one-fourth of the gross earnings and receipts of the said mill and premises, including wheat bran, screenings, and all kinds and description of produce usually received and ground at flouring and grist mills; that under said contract or lease the said defendant entered in and took possession of the said plaintiff's one-half of said mill on the day aforesaid and all the appurtenances connected therewith, and has used and occupied and possessed the same from said 14th day of November, A. D. 1873, until the day of the commencement of this action, the said defendant holding over and retaining the possession thereof under the stipulations, provisions, and agreements of the aforesaid contract and lease; that the gross earnings of said mill and

premises during the time aforesaid are and have been, grain, flour, bran, shorts, and screenings, of the value of ten thousand dollars; and that on' *the* fourth of said gross earnings of said mill are and have been of the value of two thousand five hundred dollars, and the same are now due, unpaid and undelivered to this plaintiff; that the said plaintiff heretofore, to wit, on the 5th day of March, 1875, at the said county of Gallatin, demanded from the said defendant the payment and delivery to him of the said one-fourth of the gross earnings of said mill as aforesaid, under the said contract due and deliverable to him, the said plaintiff, but to pay or deliver the same, or any part thereof, the said defendant hath heretofore failed and refused, and still doth fail and refuse. And the said plaintiff, further complaining, for a separate cause of action alleges that on the 10th day of October, A. D. 1867, at Gallatin City, in the county of Gallatin, Montana, the said defendant made his certain promissory note or contract, in writing, bearing date on that day, which said note or contract, in writing, is in the words and figures following, to wit:

GALLATIN CITY, *October 10th*, 1867.

For value received I promise to pay A. J. Davis twelve hundred dollars in flour, at the Helena prices, per quantity, less the freight from this place to Helena, to be delivered on or before the first day of June next. This contract is upon a gold basis.

(Signed) W. A. FREDERICKS.

[Int. rev. stamp, 50 cents.]

And then and there delivered the said promissory note or contract to the said plaintiff, who is now the owner and holder thereof; that the said defendant failed and refused to deliver the said flour, or any part thereof, to the said plaintiff at the time the same was to be delivered under the said instrument in writing above set forth, or at any other time, and failed to pay the said plaintiff the said sum of twelve hundred dollars, or any part thereof, although both said flour and said sum of money were demanded at the time the same was deliverable and payable under the said promissory note or contract; that by reason of the failure of the said defendant to deliver the said flour as provided in the said instrument in writing, this plaintiff has been damaged in the sum of $1,200.00, together with interest on the said amount from the 1st day of June, A. D. 1868.

And the said plaintiff, further complaining of the said defendant, for a separate and further cause of action states that the said defendant at the time of the commencement of this action was indebted unto him on open account in the sum of four thousand six hundred dollars, the same being for divers and sundry sums of money loaned the said defendant at his special instance and request between the 10th day of October, A. D. 1867, and the 1st day of February, 1874, and for money paid, laid out, and expended for the said defendant at his special instance and request by this plaintiff between the days aforesaid, and for lumber, blacksmith's tools, and goods, wares, and merchandise sold and delivered to the said defendant at his special instance and request between the dates last aforesaid; that no part of the said sum of $4,600.00 has been paid by the said defendant, although often demanded.

Wherefore the said plaintiff demands judgment against the said defendant for the sum of $2,500.00, with interest thereon from the 6th day of March, 1875, and also for the sum of $1,200.00, with interest due thereon from the 1st day of June, A. D. 1868, and also for the sum of

$4,600.00, with interest thereon from the 1st day of February, A. D. 1874, besides costs of suit.

SAMUEL WORD, THOS. EDWARDS,
CHUMASERO & CHADWICK,
Plaintiff's Attorneys.

TERRITORY OF MONTANA,
County of Lewis & Clarke, ss:

Andrew J. Davis, being first duly *duly* sworn, deposes and says that he is the plaintiff named in the foregoing amended complaint; that he has heard the same read and knows the contents thereof; that the
58 same is true of his own knowledge except as to those matters stated on information and belief, and as to those matters he believes it to be true.

A. J. DAVIS.

Subscribed and sworn to before me this 1st day of April, A. D. 1876
W. F. CHADWICK,
Notary Public.

(Endorsed:) No. 2. Andrew J. Davis vs. W. A. Fredericks. Amended complaint. Filed April 5th, 1876.

W. T. DAVIS, *Clerk.*

A true copy. Attest my hand and seal of said court affixed this 14th day of May, A. D. 1877.

THEO. MUFFLY, *Clerk.*

I, C. L. Clark, sheriff of Gallatin County, Montana Territory, do hereby certify and return, that by virtue of the writ of attachment hereunto appended I did, on the 8th day of March, 1875, levy upon the property of the said defendant, W. A. Frederick, the following described property, to wit:

The one equal and undivided half of the Willow Creek grist or flouring mill situate on Willow Creek, on section numbered seven (7), township numbered one (1) south, of range numbered one (1) east of the lands granted to the North. Pacific Railroad Company by the
59 United States, together with the equal one-half of all and singular the tenements, hereditaments and appurtenances, as well as the one-half of all the mill dam, races, flumes, fixtures and machinery thereunto belonging or in any wise appertaining; also 498 sacks flour, a quantity of wheat, bran, shorts, and all the tools and other property in the building claimed or owned by the said defendant; also a pile of lumber, 500 feet more or less, lying close to the mill; also the frame dwelling-house situate and being in Gallatin City, Gallatin County, together with the land upon which said house is situated, and the log house occupied by J. H. D. Street, and all other improvements upon said land claimed and owned by said defendant, W. A. Fredericks.

Witness my hand the 9th day of March, A. D. 1875.

C. L. CLARK, *Sheriff.*

List of property attached by order of the writ of attachment hereunto appended, to wit: One blacksmith forge, 1 bellows, one anvil, one vice, two screw-plates, hammers, tongs, cold chisels, one handsaw, blacksmith chest, one diamond plow, thirty bushels of charcoal, more or

less, one lot of horseshoes (new) and lot of iron, 1 dirt-scraper.
60 Witness my hand the 20th day of March, 1875.

C. L. CLARK,
Sheriff of Gallatin County.

A true copy. Attest my hand and the seal of said court hereunto affixed this 14th day of May, A. D. 1877.

[SEAL.] THEO. MUFFLY, *Clerk.*

Writ of attachment.

In the district court of the 1st judicial district of the Territory of Montana, in and for the county of Gallatin.

A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS, DEFENDANT.

The people of the Territory of Montana to the sheriff of the county of Gallatin, greeting:

Whereas the above entitled action was commenced in the district court of the first judicial district of the Territory of Montana, in and for the said county of Gallatin, by the plaintiff in the said action, to recover from the defendant, W. A. Fredericks, in the said action the sum of $2,500.00 *dollars* lawful money of the United States, besides interest at the rate of per cent. per from the day of , A. D. 187 , and costs of suit; and the necessary affidavit and under-
61 taking herein having been filed as required by law:

Now we do therefore command you, the said sheriff, that you attach and safely keep all the property of said defendant, W. A. Fredericks, within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand as above mentioned, unless the said defendant give you security by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking and hereof make due and legal service and return.

Witness Hon. F. G. Servis, judge of said district court of the first judicial district, this 6th day of March, A. D. 1875.

Attest my hand and the seal of said court the day and year last above written.

[L. S.] W. F. DAVIS, *Clerk.*

Filed on return March 9th, 1875.

W. F. DAVIS, *Clerk.*

62 In the first judicial district court, within and for Gallatin County, Montana Territory.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
ANDREW J. DAVIS AND CALEB GILBERT, DEFENDANTS.

And now comes the above named defendant Andrew J. Davis, and by leave of the court first had and obtained, and for amended answer to

the said plaintiff's complaint filed herein, denies that the said plaintiff, as a married woman, sole trader or otherwise, is or ever was seized or possessed in her own right and as her own and separate property or otherwise of the property or premises mentioned and described in said complaint.

Defendant admits that he is the owner of the undivided one-half of the said premises and property, but denies that the same is owned or possessed by him as tenant in common or otherwise with the said plaintiff. Defendant denies that no person save the said plaintiff and this defendant has any interest in the said property save said Gilbert,
63 mentioned in the said complaint on the contrary this defendant avers that W. A. Fredericks, the husband of the said plaintiff, is now, and at all times since the erection of said mill in the said complaint *in the said complaint* mentioned has been, the owner of the undivided one-half of the said premises and property and the co-tenant of this defendant. Defendant admits that the mortgage executed by the said plaintiff to the said defendant Caleb Gilbert upon the said premises appears of record in the recorder's office of the said county of Gallatin, but defendant denies that it is any lien upon the said premises, and avers that at the time of the execution thereof the said plaintiff had no interest in the said premises belonging to the said W. A. Fredericks as hereinafter stated, and that there was no consideration for the execution thereof or that the same was ever delivered to the said Gilbert, and that the same was, without the knowledge or consent of the said Gilbert, executed and placed on the records of the said county of Gallatin for the purpose of hindering, delaying, and defrauding this defendant and other creditors of the said W. A. Fredericks, husband of said plaintiff, out of their just debts and demands owing as aforesaid
64 and for that reason the same is fraudulent and void.

And the said defendant, further answering, denies that he now is or ever was indebted unto the said plaintiff in any manner or in any manner or amount whatsoever or in any services or at all on account of work, money, or materials paid, laid out, or expended in or about the improving, preserving, or operating said property and said mill. Denies that plaintiff ever paid, laid out, or expended any money or property or performed any work in or about improving, preserving, operating the said property or mill, or for or about any property in which the said or the defendant has or had any interest whatsoever. And the said defendant, further answering, avers that he and the said W. A. Fredericks are now, and since the day of November, A. D. 1873, have been, the owners of the premises and property in said complaint described, and that on or about the date last aforesaid this defendant leased to his cotenant, W. A. Fredericks, his undivided one-half of the said mill and premises, and that the said Fredericks has held and occupied the same under such lease and agreement from the date aforesaid until about the 6th day of
65 March, A. D. 1875. And the said defendant avers and charges for a further defence to the said action, as well as for cross-complaint or bill therein, that the said mill was contracted and erected, and the material therefor, together with the appurtenances, with the means of the said W. A. Fredericks and the defendant. That the said plaintiff in this action had no estate, real or personal, in her own right or otherwise, and was then and still is the wife of the said W. A. Fredericks, and did not contribute any services whatsoever towards the erection or completion of said mill and premises, and that the said W. A. Fredericks was at the time of the erection and completion of said mill and premises, and ever since has been, and now is, the owner of the same. And

this defendant further answering, avers that at the time of the erection of said mill and the acquiring of the title of the same, and the premises contracted therewith, the said W. A. Fredericks was, ever since, has been, and now is jointly indebted unto this defendant and divers and sundry other persons in large sums of money; that for the purpose of securing the debts and demands of this defendant he commenced his suit in the district court within and for the said county of Gallatin,
66 in the Territory aforesaid, against the said W. A. Fredericks on the 6th day of March, A. D. 1875, and at the same time caused a writ of attachment to be issued from under the hand and seal of the clerk of said court, which said writ was duly served on the said undivided one-half of said mill, fixtures, and appurtenances as the property of the said W. A. Fredericks (a copy of the amended complaint in said cause and writ of attachment is herewith filed and made part of this answer, as Exhibit A and B); that the same is still in full force and effect, and by virtue of said seizure and levy of said writ the said defendant acquired *and became* and now has a lien on the said mill and premises aforesaid to the extent of his said demand; that the said W. A. Fredericks being so indebted as aforesaid, and for the purpose of hindering, delaying, and defrauding defendant and said other creditors out of their just debts and demands as aforesaid, caused a conveyance to be made to the said plaintiff of the said undivided one-half of said mill, premises, and property described in said complaint, and whatever pretended interest or estate shall acquire by virtue of said conveyance had only the effect of vesting in her the naked,
67 legal title to the said undivided one-half of said mill in trust for the sole and exclusive use of her said husband, the said W. A. Fredericks.

And this defendant, further answering, avers *that* the facts to be, that said mortgage executed to the said Caleb Gilbert is and was a part and parcel of the same fraudulent design, combination, and confederacy of the said plaintiff and the said W. A. Fredericks, her said husband, to cover up and place beyond the reach of the creditors of the said W. A. Fredericks the said property mentioned therein; that the said W. A. Fredericks at the date of said pretended conveyance was, ever since has been, and now is wholly insolvent; that the said W. A. Fredericks has remained in the sole and exclusive possession of said mill and premises since the day of November, A. D. 1873, and ever since enjoyed the use, benefits, and profits arising from the same.

And defendant further avers that the said W. A. Fredericks so held and retained the interest of the said defendant in the said mill and premises on such lease until the 6th day of March, A. D. 1875, when the said lease therefor expired and determined; and that on or
68 about the day last above named this defendant demanded of the said W. A. Fredericks, who was then in the possession of his undivided one-half of the said mill and premises, *and unto* the possession jointly with the said W. A. Fredericks *of* the whole of the said premises as a tenant in common *of* the said W. A. Fredericks, but that the said W. A. Fredericks then and there refused to admit the defendant into the joint possession with him of the said mill premises or any part thereof, and refused to allow or admit the defendant into the possession of the same, or any use or enjoyment of the same, or the profits or proceeds thereof, but wholly excludes this defendant from such possession; that the said mill is a flouring mill, and is very valuable for the purposes of grinding grain and producing flour; that there is now and has been since the said date of the exclusion of this defendant from

the said mill an abundance of grain to be ground at said mill, and the use of the same is very valuable.

Wherefore defendant prays that the said W. A. Fredericks be made a party to this suit; that he be required to answer this cross-complaint; that the honorable court may by its judgment and decree declare all pretended deeds and conveyances to the said plaintiff in and to
69 said mill and premises null and void as against this defendant and all other creditors of said W. A. Fredericks; that the said pretended mortgage to the said Gilbert, and all liens against to the demands, liens, and encumbrances of this defendant; that an accounting of all of the proceeds and profits of said mill be had, and that the said plaintiff and her said husband be adjudged to pay defendant all such sums of money as may be found due defendant on the taking of such account; and inasmuch as said mill and premises and property aforesaid cannot be divided in kind without injury to parties and creditors interested therein, defendant prays that the same may be sold in manner and form as prescribed by law, and that the proceeds of said sale be brought into court to await the order of distribution thereof, and for such other relief as shall be agreeable to equity.

WORD AND SPRATT,
CHUMASERO & CHADWICK, &
A. M. WOOLFOLK,
Att'ys for Defendant Davis.

TERRITORY OF MONTANA,
County of Gallatin, ss:

Andrew J. Davis, being duly sworn, says he has heard the foregoing amended answer read and knows the contents thereof; that the
70 matters therein stated of his own knowledge therein set forth on information he believes to be true; that he is one of the above-named defendants.

A. J. DAVIS.

Subscribed and sworn to before me this 14th day of May, 1877.

THEO. MUFFLY,
Clerk.

Filed with the leave of court on payment of costs May 14th, A. D. 1877.

THEO. MUFFLY,
Clerk.

In first judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
ANDREW J. DAVIS, CALEB GILBERT, AND Wellington A. Fredericks, defendants.

Now comes the above-named plaintiff and demurs to all that portion of the answer and cross-complaint averring fraud and averring a lien upon said property by virtue of an attachment inspired by said Andrew J. Davis against the property of Wellington A. Fredericks.

71 1st. Said averments constitute no defense to plaintiff's cause of action.

2. The said averments are redundant and immaterial.

JOHNSTON & TOOLE AND
J. H. SHOBER,
Attorney' for Plaintiff.

Filed May 14th, 1877. Theo. Muffly, clerk.

In the district court, first judicial district, Gallatin County, Montana Territory.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
ANDREW J. DAVIS ET AL., DEFENDANTS.

Now comes the plaintiff in the above-entitled cause and for answer to the cross-complaint and new matter set up by defendant Davis in his pleading denies each and every allegation therein contained, generally and specifically; and the said plaintiff specially and specifically denies any and all fraud or collusion, and avers that she is seized and possessed of the property claimed by her in her complaint in this cause and asks that her title thereto be adjudicated and determined herein, and that she have the relief demanded in her complaint.

J. H. SHOBER & JOHNSTON & TOOLE,
Att'ys for Plaintiff.

72 TERRITORY OF MONTANA,
County of Gallatin, ss:

Sarah J. Fredericks, plaintiff, makes oath and says that the matters and facts as stated in the foregoing pleading are true of her own knowledge.

SARAH J. FREDERICKS.

Subscribed and sworn to before me this May 14th, A. D. 1877.
J. H. SHOBER,
Notary Public, M. T.

Filed May 14th, 1877. Theo. Muffly, clerk.

Affidavit.

In the district court, 1st judicial district, in and for Gallatin County, Montana Territory.

ANDREW J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS, DEFENDANT.

COUNTY OF GALLATIN,
Territory of Montana, ss:

Sarah J. Fredericks, a sole trader and doing business in her own name as such sole trader, being duly sworn deposes and says that she is and was at the time of the levy of the attachment in the above-
73 entitled cause the owner of and entitled to the possession of the following described personal property attached in said cause, to wit: eighty-two sacks XXX (triple X) flour of the Willow Creek flouring mill brand; a quantity of wheat (in a pile) containing about (70) seventy bushels; five hundred feet of pine lumber, and the tools and other personal property in the building owned by her; and that the said defendant has not now, nor had he at the time of such levy, any interest in said personal property or any part of it, and further affiant says not.

SARAH J. FREDERICKS.

Subscribed and sworn to before me this 20th day of March, A. D. 1875.

G. L. DUKE,
A Justice of the Peace in and for Gallatin County, Montana Territory.

To C. L. CLARK,
Sheriff of Gallatin Co., M. T.

Please take notice that I claim the personal property mentioned in the affidavit hereunto annexed and served, and require you to deliver the same to me.

SARAH J. FREDERICKS.

LOWER WILLOW CREEK, GALLATIN COUNTY, M. T.,
March 20th, 1875.

74 *Affidavit of ownership.*

In the district court of the 1st judicial district of the Territory of Montana, in and for Gallatin County.

SARAH J. FREDERICKS
vs.
C. L. CLARK, SHERIFF OF GALLATIN COUNTY, M. T.

SARAH J. FREDERICKS, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action.

2. I am the owner of and lawfully entitled to the possession of the following described personal property, to wit: Two hundred and eighty-two sacks of XXX (triple X) flour made at the Willow Creek flouring mill and branded with the brand of said mill, one hundred and seven bushels of wheat, and five hundred feet of pine lumber.

3. That the said property is in the possession of and is wrongfully detained by the defendant in the said action.

4. That the alleged cause of detention of said property, according to my knowledge and information, is the following, to wit: Said defendant attached said property on the 8th day of March, 1875, as the
75 property of W. A. Fredericks.

5. That said property has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or an attachment against my property.

6. And that the actual value of the said property is two thousand two hundred and thirteen dollars, as follows, to wit: 282 sacks of flour, at $7.00 per sack, is $1,954.00; 107 bushels of wheat, at $2.00 per bushel, is $214.00; and 500 feet of pine lumber, at 5 cents per foot, is $25.00.

(Signed) SARAH J. FREDERICKS.

Subscribed and sworn to before me this 1st day of April, A. D. 1875.

(Signed) D. H. KECTHAM,
A Justice of the Peace in and for the County of Gallatin, Montana Territory.

TERRITORY OF MONTANA,
County of Gallatin, ss:

To the coroner of the county of Gallatin, M. T.

You are required to take from the defendant, C. L. Clark, the property described in the above affidavit, and to deliver it to the plaintiff.

(Signed) J. H. D. STREET & JOHNSTON & TOOLE,
Attorneys for Plaintiff.

76 I certify that the above is a true copy of the affidavit.

A. D. McPHERSON,
Coroner of Gallatin County, M. T.

Dated this fifth day of April, A. D. 1875.

Register's receipt.

Received, land-office, Helena, M. T., April the 11th, 1870, of A. J. Davis, one hundred and fifty-five dollars, in full of costs and expenses taxed against A. J. Davis and W. A. Fredericks in the contested case of W. A. Fredericks, applicant, against Jarvis Aiken, Wm. Y. Cadman, and A. J. Davis, in this office, the above being the costs due to register and receiver in said case.

L. B. LYMAN, *Register.*

Receipt of Arick.

Received, Helena, M. T., June 7, 1870, of A. J. Davis, fifty dollars, on account for services rendered W. A. Fredericks in his application for homestead entry.

R. E. ARICK.

Account of Arick.

A. J. Davis to R. E. Arick, dr.

To assumption on account of Fredericks' land case	$50 00
For services in case of application for remission of int. rev. tax	$25 00
To assumption on account of case of W. R. Reel, land	
77 suit	$100 00
To services in case of remission banker's license	$25 00
To drawing demurrer and copy in sample case	$10 00
	$210 00

Received payment in full, Aug. 4, 1871.

R. E. ARICK.

A. J. Davis has advanced to me this day, August 4th, one hundred dollars, which I agree to repay in services as attorney for him.

(Signed) R. E. ARICK.

W. A. Fredericks in account with A. J. Davis, dr.

1866.			
Nov.	1.	To amount paid Judge Hall, of Deer Lodge	$42 00
"	5.	" 9 plugs tobacco	5 40
1877.			
Jan'y	14.	" 2 lbs. candles	1 00
Feb'y	16.	" ¾ tea, per Shelby	1 87
M'ch	7.	" 1 paper soda	50
"	"	" 1 sett fanning-mill irons	30 00
Ap'l	20.	" 20 cable chains, $5,00 ea	100 00
	29.	" chickens	10 00
	"	" 1 paper tacks, 50; 1 gro. screws, 3.00	3 50
		" 47 bushels wheat, per Jones, 2.00	94 00

Sept.	29.	"	paid Clark, of Sterling, for bolting cloth	72 00
		"	118½ # plow steel, 50 c	59 50
	Oct.	10.	" 1 cook stove	75 00
78			1 lot dishes	30 00
			1 set blacksmith tools	350 00
Oct.	24.	To	paid Warren Allen	40 70
'68.				
Jan'y	1.	To	cash paid for Fredericks on mill suit to date	721 00
July	4.	"	cash	25 00
"	"	"	expense to Bozeman on his business	15 00
"	8.	"	paid for goods in Helena	59 60
"	15.	"	cash	50 00
"		"	paid expenses in Helena for Fridley, witness	106 00
Aug.	3.	"	" Street and Edwards	320 00
"	"	"	cash	50 00
"		"	paid his expenses to Virginia	40 00
Sept.	16.	"	gold dust	20 00
	22.	"	" "	60 00
		"	currency	15 00
	25.	"	paid King & Gillette	18 25
	"	"	cash	20 00
	30.	"	"	50 00
Oct.	28.	"	paid Edwards	25 00
Nov.	3.	"	paid for him in Deer Lodge	110 00
		"	cash	60 00
	5.	"	paid Edwards	20 00
		"	paid Parrott & Chadwick	100 00
		"	R. P. Vivion	100 00
79			cash paid Edwards	50 00
			bill at Germain's	151 00
			his stable bill	36 00
			his expenses to and from Helena	40 00
			paid Thoroughman and Davis	150 00
		To	paid his portion of Gallatin transcript	46 00
			" transcript to supreme court	150 00
			" expenses to Virginia	14 00
1869.				
Jan'y	10.	To	3 oz. gold dust	54 00
	"	"	paid McCormick's bill of groceries	66 00
	"	"	" " " "	25 02
	15.	"	" " " "	33 25
	20.	"	cash	20 00
			paid Myers for butter	6 20
Feb'y	26.		" Albaugh case	46 20
			" Col. Stafford's fees	130 00
Mc'h	22.		" McCormick's bill of iron & gro	84 73
	28.		" " "	64 80
Ap'l	25.	To	cash	100 00
		"	p'd Street on trip to Helena	64 00
		"	Drew	20 00
	29.	"	paid cash to self at Helena	12 00
		"	" to Wiel	5 00
		"	cash in Helena	35 00
80	July	7.	To paid McCormick bill of groceries	42 20
		8.	" cash	40 00
Sept.	4.		do.	20 00

	10.	Cash paid McCormick for goods	43 25
	24.	" " " " "	64 00
Nov.	5.	" " " " "	73 39
	25.	Cash	10 00
		To Lyman's fees at land office	25 00
Dec.	5.	" cash for wood	5 00
		" " " wagon	25 00
	25.	" " " goods at Helena	40 00
		87 sacks of flour charged to me, but not received, in Wilson's care, $10.00	870 00
Jan'y	10.	To bill of goods per McCormick	71 35
Ap'l	19.	" " " " " "	8 10
May	19.	" " " " " "	24 78
June	8.	" " " " " "	42 50
July	10.	" " " " " "	8 75
Aug.	9.	" bill of iron	54 63
		" horse nails	8 75
Sept.	5.	" bill from McCormick	66 75
Oct.	3	" " " "	34 90
		" 4 half bushels used or sold	8 00
		" 1 saddle & bridle per self	30 00
81		To bill of lumber from Wa	387 00
		" 2 kegs nails	40 00
		" one large store lock	6 00
		" 1 Sibley tent	40 00
		" 1 cook stove from Radersburg	20 00
		" 1 bbl. whiskey used and sold, 40 gal., $6	240 00
		" plows, wagons, & stock not accounted for	300 00
		" cash paid Lyman, land office	155 00
		" " pd. Toole for attending his case	200 00
		" " " R. Arick for assisting	100 00
	1873.		
M'ch	13.	To cash	15 00
Ap'l	23.	" 2 wagon tires, 150#, 10	15 00
		" 1 chain & cutter	6 00
	23.	" cash	10 00
		" do	20 00
		" paid Clark, Conrad & Curtin	36 20
		" " S. M. Hall for gro. bill	32 35
		" 2 horses	200 00
May	31.	" cash paid lady	10 00
July	2.	" " " Lyman	10 00
	21.	" 20# 4 qsa. nails, 14	2 80
		" 1 gro., 1½ in screws	2 50
		" 1 " 2 " "	3 00
		Cash paid Clark, Conrad & Curtin	22 50
82	July	25. Paid John Bothwell	38 80
	Aug.	12. To 4 bars of iron, 36 in 12½	4 50
Sept.	11.	To paid wife	5 00
Oct.	1.	" " Lavenburg, per lady	20 00
		" 1 p's yal. iron, 38 to 30	11 40
	13.	" paid to Sands	20 65
	16.	" ½ half proff stall	36 50
		" 1 doz. mill picks	23 00
		" 48 feet screening, 50	24 00

Feb'y 7.	" cash pd. Clark, Conrad & Curtin	15	25
" " " " " " " "	old bill	9	39
1875.			
M'ch 1.	" amount as near as possible to ascertain of sale of plows, picks, wagons, &c	250	00
	To house and shop rent to date from August 1, 1868, to March 1, 1875	1,580	00
	To 1 side-saddle	35	00
	" 1 horse	60	00
	" 1 carpet	45	00
	" 1 stove for sitting-room	35	00

Received copy of above this Oct. 24, 1877.

TOOLE & JOHNSON, &
J. H. SHOBER,
Att'y: for Defendant.

CREDIT.

1866.			
	May 8. By 1 sash & 1 plow-stock	11	00
83	May 8. By cash balc. of paying Mrs. Fredericks	119	00
1867.			
M'ch 7.	To 5¾ candles, 50c	2	50
July 28.	" keeping hogs to date	20	00
Sept. 25.	" balc. on settlement with Jones	29	64
29.	" cash	37	00
1868.			
Aug. 1.	By balc. on hand after paying ex. Mrs. F	273	75
	By one-half of am't collected from Ault by Gy	470	00
1873.			
Feb'y 25.	" 22 days' work at foundry, 3	66	00
M'ch 31.	26 " " " " " 3	78	00
May 1.	21½ " " " " " 3	61	50
	difference in balc. on scales	6	90

Receipt.

GALLATIN CITY, *Sept. 13th*, 1869.

Received of W. A. Fredericks fourteen hundred and fifteen dollars and thirty-eight cents, being in full of the within claims and all demands to date.

A. J. DAVIS.

Drew receipt.

GALLATIN CITY, M. T., *Sept.* 11, 1868.

W. H. DREW, Esq.:

D'R SIR: The note which I hold against you and W. A. Fredericks is paid, and I shall not hold you further answerable for said amount.

(Signed) A. J. DAVIS.

84 A true copy of receipt from A. J. Davis to Drew.

Agreement, Davis and Fredericks.

HELENA, *Nov. 14th*, 1873.

Memorandum of agreement made and entered into this day between

A. J. Davis and W. A. Fredericks. Said Davis has this day leased his one undivided half of mill on Willow Creek, in the county of Gallatin, Montana Territory for the full term of one year from this date, and the said Fredericks on his part agrees to deliver or store, as per option of said Davis, one-fourth of the gross earnings of the entire mill, including wheat, bran, and screenings, and at whatever time said Davis may require the same ground, to grind the same free of charge to said Davis, by said Davis furnishing sacks for same. Said Fredericks is to be at all expense of running said mill and keeping the establishment in repair.

A. J. DAVIS.
W. A. FREDERICKS.

Deed from Davis to Drew & Mrs. F.

GALLATIN COUNTY, *July 1st*, 1871.

I have this day sold unto Wm. H. Drew and Sarah J. Fred-
85 ericks a certain mill near Bozeman, known as the Ault mill, for and in consideration of the sum of two thousand dollars to me paid, and in consideration of said amount do hereby transfer all of my right, title, and interest in and to said property to said Drew and Fredericks, with all the privileges and appurtenances thereunto belonging, including flume, &c., &c.; and I do hereby warrant and defend the above from and against all persons claiming through or by me up to this date.

A. J. DAVIS.

Toole & Toole account.

Col. A. J. Davis in a/c with Toole & Toole.

To trial tax question Co. com'rs	50 00
" counsel points in agreement land office case, Hot Springs	50 00
" 6 days' trial & argument, Fredericks' case, land office	200 00
" assignment note & mortgage, Everts	10 00
" bill, decree, &c., vs. Germain	150 00
" " " " " sample	200 00
" trial &c., vs. Hendrie, D. C	100 00
" " " " sup. ct	100 00
R. boulder bridge, Mc	20 00
To trial & ex. authorities on decree, self vs. Church, C. & C	100 00
86 To 2 com'pl'ts in replevin cases, cattle & counsel, &c.	50 00
1870 to date (to foot)	$1,030 00

CREDIT.

By cash, $500. By cash, $350.00	$850
Balc. due	180 00
Cr. by reduction this day made	180 00

The above comprises a full settlement of accounts to this date, Sept. 9th, 1874.

TOOLE & TOOLE AND,
E. W. TOOLE.

HELENA, *January 27th*, '75.

Mrs. SARAH J. FREDERICKS:

I received yours of the 14th inst. a few days since; you seem to talk a little more rational. You say you wish to do what is right, and, if so, bring Mr. Fredericks over with you; there will be no trouble settling everything up. After our matters are settled up, I will then make a proposition to buy or sell, to your satisfaction. Satisfied that I could not run the mill to your satisfaction, and I know you could not to mine. Anything that we cannot agree upon we will refer it to parties that are fully conversant with the matter referred, and abide their decision. I think there will be but a few points,
87 and possibly not any, but what we can settle without arbitration, but should there be, and if we both desire to be just and fair, we certainly will be willing to submit it to the judgment of persons who are disinterested and have a full knowledge of the matter. I have a memorandum of all the matters that was talked over at your place and seemed at that time satisfactory. If you are disposed to act right you will find me always ready to meet you upon those grounds. I regret to learn of your bad health, and hope ere this you have quite recovered. If you will write me and let me know when you will be over, so that I will be here to meet you, I will be much obliged. There will be no use of your coming over unless he come' with you. If you are both here, I think there will be no trouble whatever.

Yours, truly, A. J. DAVIS.

HELENA, *Dec. 19th*, 1874.

W. H. DREW:

On my return I found letter from you stating that you had forgotten the very thing you had come all the way over here to ascertain, and inquire again what you can depend upon for the coming season. When
88 you left here you were to go home and gather up the remaining cattle, sell them, and pay as far as they will go on the note. You were to go on and manage the farm and mill as best you could; that you were to have the balance of my logs sawed up and stacked up with my lumber at the mill; it matters not to me whether you rent the farm and mill or not; all is, I want you to pay as fast as you can, and as long as I am satisfied that you are acting in good faith I do not propose to distress you; all these facts I stated to you when here, and also you promised me the balance due on the June note at the time. I stated to you when here that I did not wish to sell the interest in my mill at Willow Creek, and I now state to you that I have no particular business for you at Willow Creek, save seeing that the dam is completed as per our contract, together with what the court requires. You are also very forgetful; I fear that you would be an unsafe man to intrust business with. Indeed, sir, I should fear that you would recollect more than was said to you. For these reasons I shall de-
89 cline to call upon you to attend to any business for me. I shall soon put a man at Willow Creek to look after my interest at that place.

Yours, truly, A. J. DAVIS.

HELENA, *May 4th*, 1873.

W. H. DREW:

D'R SIR: It is now past the first of May, and the balance on that note is not paid. I am very much in need of money and hope you will

remit the balance, or at least a part of it, on the rest of this note. Fredericks started over to Gallatin last week; probably he is at your place before this; he took over the pinion to your saw-mill. Net Perkins wrote me some time since, desiring to sell me his interest in the judge. in the mill case, and for me to credit you with the amount; the arrangement would not suit me at this time. I hope that you will get the mill up soon on Willow Creek. I will assure you that it is pretty hard on me if I am obliged to lay out of the use of the money invested in machinery much longer; four or five thousand dollars laying idle simply in consequence of you not getting the mill up is no small
90 item; one-half of the profits of a flouring mill will amount to something, and you should hurry up your cakes, for I cannot stand such losses much longer. From present appearances, I have lost the interest on the investment for one year, which of course you would properly be held answerable for, but if you push it now with energy you can make more reasonable terms with me in the end than you can if you still treat the matter with so much independence. I cannot see, friend Drew, why you should be so slack and indifferent in your business. I have always looked upon you as one of our most prompt and energetic men.

You certainly have a plenty of property that you can convert into money and put through all that you have undertaken. I rely in the matter solely upon you, and will expect for you to put your shoulder to the wheel and go ahead.

Yours, &c.

A. J. DAVIS.

91 *Agreement.*

Memorandum of agreement made and entered into this day between A. J. Davis and W. H. Drew: Said Davis agrees to furnish machinery necessary for a flouring mill, to be located on Willow Creek, in the county of Gallatin, in the Territory of Montana, such as water-wheel, 1 p'ts of four-foot mill burs, smut-mill, oat separator, shafting gearing, belting, bolting-cloth, &c.; or, in other words, such machinery as is usually furnished by a tan'y and mill furnishing establishment for flouring-mills, all of which is to be delivered to the mill location on Willow Creek. Said Drew, on his part, agrees to furnish all material for a suitable mill building, and be at all expense of putting up the same and finishing the same in a substantial and workmanlike manner. He further agrees to furnish material and put up at his own expense all necessary machinery, together with the machinery which said Davis is to furnish, in a substantial and workmanlike manner. Said Drew is to put in and furnish material, at his own expense, for a good and sufficient dam across Willow Creek, to be built in a permanent and substantial manner, with tubes and gates upon said dam to be of a
92 sufficient height to give sufficient power or head to propel all of the machinery in said mill to its full capacity. Said Drew agrees to do all other work in like manner that is or may be necessary to complete the grounds or mill, such as digging race, walling the same, digging the mill pit and walling the same, and securing anything connected with mill or machinery, so that the entire mill and all the parts connected therewith may be substantial and permanent, and all parts connected with machinery, and all machinery put in complete running order, ready to start to business in a permanent manner. Now, it is agreed that after each party has performed his portion of the con-

tract, as herein stipulated; that the said mill, mill site, and all the land belonging to the mill tract, not to exceed 160 acres, shall be owned and held jointly, each party being entitled to one undivided half interest of mill, mill-site, land, and that all expenses in perfecting title to land shall be borne equally and jointly. It is further agreed that after the completion of this mill, as per terms of this contract, that said Drew, on his part, should leave unpaid for labor or material furnished, that may have been used in mill, or in construction with said enter-
93 prise, that his interest shall be held liable for all such debts until the same shall be satisfied by such Drew.

A. J. DAVIS.
W. H. DREW.

BOZEMAN, *July 30th*, 1872.

Endorsement on the above:
Received for record November 17th, 1873, at 8 a. m., and recorded in Vol. I of deeds, at page 387. Fees $2.50.
[COUNTY SEAL.] ARCH. GRAHAM, *Recorder.*

Filed Nov. 1st, 1877. Theo. Muffly, clerk.

Complaint.

In the district court, first judicial district, Territory of Montana, county of Gallatin.

A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS, DEFENDANT.

The plaintiff complains of the above-named defendant, and alleges:
That heretofore, to wit, on the 14th day of November, 1873, at the county of Gallatin, in the Territory of Montana, the said plaintiff was the owner and in the possession of an undivided half of a certain
94 flouring mill situated on Willow Creek, in said county and Territory. That on the day and date last aforesaid the said plaintiff, by contract in writing, leased the said undivided half of said mill and premises to the said defendant for the period of one year from said date, which said written contract was duly signed by said defendant; that by the terms of said contract the said defendant, in consideration of said lease, undertook, promised, and agreed to pay and deliver to said plaintiff the one-fourth of the gross earnings of the said mill and premises, including wheat, bran, and screenings, that the said defendant, under said contract, took possession of said half of said mill and premises, and has used and occupied the same from said 14th day of November, A. D. 1873, until the present time. That the gross earnings of said mill and premises during the time aforesaid are and have been, in grain, flour, bran, shorts, and screenings, of the value of ten thousand dollars. That one-fourth of the said gross earnings of said mill are and have been of the value of two thousand five hundred dollars, that the the said one-fourth of the gross earnings of said mill are now due to plaintiff; that heretofore, to wit, on the 5th day of March,
95 1875, at the said county of Gallatin, the said plaintiff demanded from the said defendant the payment and delivery to him of the said one-fourth of the earnings (gross) of said mill as aforesaid, but to pay or deliver the same or any part thereof, the said defendant has wholly failed, and still fails and refuses to pay or deliver the same

or any part thereof, and that the whole of said ¼ of said gross earnings is now due and remains unpaid.

Wherefore the plaintiff prays judgment against the said defendant for said sum of twenty-five hundred dollars and costs of suit.

TH. R. EDWARDS,
Att'y for Plaintiff.

A. J. Davis, the above-named plaintiff, makes oath and says that he has heard read the foregoing complaint, and that the facts as therein stated are true of his own knowledge.

A. J. DAVIS.

Sworn to before me, this the 6th day of March, 1875.

W. F. DAVIS, *Clerk.*

Summons.

In the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin.

96 A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS, DEFENDANT.

Action brought in the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin, and said complaint filed in said county of Gallatin in the office of the clerk of said district court.

The people of the Territory of Montana send greeting to W. A. Fredericks, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin, and answer to the complaint filed herein, within ten days (exclusively of the day of service) after the service on you of this summons, if served within this county, or if served out of this county, but in this district, within twenty days, otherwise within forty days, or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to recover the sum of twenty-five hundred dollars for money due for rent on premises, and you are hereby
97 notified that if you fail to appear and answer the said complaint as above required the said plaintiff will take judgment by default against you for the relief demanded in his said complaint.

Given under my hand and the seal of the district court of the first judicial district of the Territory of Montana, in and for the said county of Gallatin, this sixth day of March, in the year of our Lord one thousand eight hundred and seventy-five.

W. F. DAVIS, *Clerk.*

Affidavit.

Dist. court of 1st judicial district, Gallatin County and Montana Territory.

A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS, DEFENDANT.

A. J. Davis, the above-named plaintiff, makes oath and says tha

the defendant is justly indebted to the plaintiff in the sum of twenty-five hundred dollars upon an express contract for the payment of money now due, and which is not secured by any mortgage or
98 pledge upon real or personal property; said indebtedness is based upon a written promise to pay rent for the use and occupation of certain mill property upon Willow Creek, in said county and Territory.

A. J. DAVIS.

Subscribed and sworn to before me, this 6th day of March, 1875.

W. F. DAVIS, *Clerk.*

Writ of attachment.

In the district court of the 1st judicial district of the Territory of Montana, in and for the county of Gallatin.

A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS, DEFENDANT.

The people of the Territory of Montana to the sheriff of the county of Gallatin, greeting:

Whereas the above-entitled action was commenced in the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin, by the plaintiff in the said action, to recover from the defendant, W. A. Fredericks, in the said action, the sum of $2,500.00 dollars, lawful money of the United States, besides interest, at the rate of per cent. per from the day of , A. D.
187 , and costs of suit; and the necessary affidavit and under-
99 taking herein having been filed as required by law: Now, therefore, we do command you, the said sheriff, that you attach and safely keep all the property of the said defendant, W. A. Fredericks, within your said county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand as above mentioned, unless the said defendant give you security, by an undertaking of at least two sufficient securities, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

(SEAL OF THE GALL. DIST. COURT OF M. T.) Witness Hon. F. G. Servis, judge of the said district court of the first judicial district, this 6th day of March, A. D. 1875. Attest my hand and the seal of said court, the day and year last above written.

W. F. DAVIS, *Clerk.*

Sheriff's return.

I, C. L. Clark, sheriff of Gallatin County, Montana Territory, hereby certify and return that, by virtue of the writ of attachment
100 hereunto appended, I did, on the 8th day of March, 1875, levy upon, as the property of the said defendant, W. A. Fredericks, the following property, to wit:

The one equal and undivided half of the Willow Creek grist or flouring mill, situate on Willow Creek, on section number seven (7),

township numbered one (1) south, of range numbered one (1) east, of the lands granted to the North. Pacific Railroad Company by the United States, together with the equal one-half of all and singular the tenements, hereditaments, and appurtenances, as well as the one-half of all the mill-dams, races, flumes, fixtures, and machinery thereunto belonging or in any wise appertaining; also 498 sacks of flour; a quantity of wheat, bran, shorts; and all the tools and other property in the building claimed or owned by the said defendant; also a pile of lumber, 500 feet, more or less, lying close to the mill; also the frame dwelling house situate and being in Gallatin City, Gallatin County, together with the land upon which said house is situated; and the log house occupied by J. H. D. Street; and all other improvements upon said land claimed and owned by said defendant, W. A. Fredericks.

101 Witness my hand, this the 9th day of March, A. D. 1875.
(Signed) C. L. CLARK, *Sheriff.*

List of property attached by virtue of the writ of attachment hereunto appended: One blacksmith forge, one bellows, one anvil, one vice, two screw plates, hammers, tongs, coal, chisels, one hand-saw, blacksmith chest, one diamond plow, thirty bushels of charcoal, more or less, one lot of horseshoes (new), and lot of iron, and one dirt scraper.

Witness my hand, this the 20th day of March, 1875.

C. L. CLARK,
Sheriff of Gallatin County, M. T.

Complaint.

In the district court, 1st judicial dist., Gall. Co., M. T.

TERRITORY OF MONTANA,
County of Gallatin:

ANDREW J. DAVIS, PLAINTIFF,
vs.
WELLINGTON A. FREDERICKS AND WILLIAM H. DREW, defendants.

Plaintiff complains of the above-named defendants, and alleges:

That heretofore, to wit, on the 12th day of March, A. D. 1868, at the county of Gallatin, in the Territory of Montana, the said defendants made, executed, and delivered to plaintiff their certain
102 promissory note, which is in the words and figures following, to wit:

GALLATIN CITY, M. T., *M'ch* 12, 1868.

27½ oz., 5 pwts., & 14 grs.

On or before the 1st day of July next, we or either of us promise to pay to A. J. Davis the sum of (27½ oz.) twenty-seven and a half ounces, 5 pennyweights, and (14 grs.) fourteen grains of gold dust, bearing interest at the rate of five per cent. per month from date until paid, for value received of him, this 12th day of March, A. D. 1868.

(Signed) W. A. FREDERICKS.
" W. H. DREW.

Whereby the said defendants undertook, promised, and agreed to pay plaintiff, on or before the first day of July, 1868, the said sum of

27½ ozs., 5 pwts. and 14 grains of gold dust, with interest thereon from date until paid at the rate of five per cent. per month, for value received; that at the maturity of said promissory note the gold dust due thereon was of the value of twenty-five dollars per ounce; plaintiff avers that at divers times prior to the bringing of this suit in the said Ter-
103 ritory of Montana, and particularly in the month of December, A. D. 1874, at said county of Gallatin, in the Territory aforesaid, the said plaintiff demanded from the said defendants the payment and delivery to him of the gold dust due on said note, with interest, but to pay the same or any part thereof the said defendants then and there failed and refused, and still fail and refuse to pay the same. That there is due now and unpaid on said note, including interest, the sum of thirty-five hundred and seventy-two dollars, for which sum and for costs of suit plaintiff prays judgment.

TH. R. EDWARDS,
Att'y for Plaintiff.

A. J. Davis, above-named plaintiff, makes oath and says that he has heard read the foregoing complaint, and that the facts as therein stated are true of his own knowledge.

A. J. DAVIS.

Sworn to before me, this 6th day of March, 1875.

W. F. DAVIS, *Clerk.*

Summons.

In the district court of the first judicial district of the Territory of Montana, in & for the county of Gallatin.

A. J. DAVIS, PLAINTIFF,
versus
104 W. A. FREDERICKS AND W. H. DREW, defendants.

Action brought in the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin, and the complaint filed in said county of Gallatin, in the office of the clerk of said district court.

The people of the Territory of Montana send greeting to W. A. Fredericks and W. H. Drew, defendants:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin, and to answer the complaint filed therein, within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or if served out of this county, but in this district, within twenty days, otherwise within forty days, or judgment by default will be taken against you according to the prayer of said complaint.

This action is brought to recover of said defendant the sum of three thousand five hundred and seventy-two dollars upon a promissory note executed to plaintiff by said defendants, W. A. Fredericks
105 and W. H. Drew, dated March 12th, 1868, drawing interest at the rate of five per cent. per month, and given for twenty-seven and one-half ounces, five pennyweights, and eighteen grains of gold dust; and you are hereby notified that if you fail to appear and answer

the said complaint as above required the said plaintiff will take judgment by default against you for the relief demanded in his said complaint.

Given under my hand and the seal of the district court of the first judicial district of the Territory of Montana, in and for the said county of Gallatin, the sixth day of March, in the year of our Lord one thousand eight hundred and seventy-five.

{SEAL OF DIST. C'T 1ST JUD. DISTRICT, GALLATIN COUNTY, MONTANA TERRITORY.} W. F. DAVIS, *Clerk.*

Affidavit.

In the district court of the 1st judicial district, Gallatin County, Montana Territory.

A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS AND W. H. DREW, DEFENDANTS.

A. J. Davis, the above-named plaintiff, makes oath and says
106 that defendants are justly indebted to him upon express contract for the payment of money now due, and which is not secured by a mortgage, lien, or pledge upon real or personal property. Said indebtedness is based upon a promissory note for the payment of gold dust, and interest at the rate of five per cent. per month from date of said note until paid.

A. J. DAVIS.

Subscribed and sworn to before me, this March 6th, A. D. 1875.
W. F. DAVIS, *Clerk.*

Writ of attachment.

In the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin.

A. J. DAVIS, PLAINTIFF,
vs.
W. A. FREDERICKS AND W. H. DREW, DEFENDANTS. } Writ of attachment.

The people of the Territory of Montana to the sheriff of the county of Gallatin, greeting:

Whereas the above-entitled action was commenced in the district court of the first judicial district of the Territory of Montana, in and for the said county of Gallatin, by the plaintiff in said action, to recover from the defendants, W. A. Fredericks and W. H. Drew, in the said action the sum of ($3,572.00) dollars, lawful money of the
107 United States, besides interest at the rate of per cent. per , from the day of , A. D. 187 , and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law: Now we do, therefore, command you, the said sheriff, that you attach and safely keep all the property of said defendants, Fredericks and Drew, within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said

plaintiff's demands as above mentioned, unless the said defendants give you security, by an undertaking of at least two sufficient securities, in an amount sufficient to satisfy such demand, besides costs, in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service and return.

Witness Hon. F. G. Servis, judge of the said district court of the first judicial district, this sixth day of March, A. D. 1875.

Attest my hand and the seal of said court, the day and year last above written.

W. F. DAVIS, *Clerk.*

Sheriff's return.

I, C. L. Clark, sheriff of Gallatin County, Montana Territory,
108 hereby certify and return that by virtue of the writ of attachment hereunto appended I did, on the 8th day of March, 1875, in Gallatin County, levy upon as the property of the said defendant W. A. Fredericks the following-described property, to wit: The one equal and undivided half of the Willow Creek grist or flouring mill, situated on Willow Creek, on section numbered seven (7), township numbered one (1) south, of range numbered one (1) east, of the lands granted to the North Pacific Railroad Company by the United States, together with the equal one-half of all and singular the tenements, hereditaments, and appurtenances, as well as the one-half of all the mill-dams, races, flumes, fixtures, and machinery thereunto belonging or in any wise appertaining; also 498 sacks flour, a quantity of wheat, shorts, bran, and all the tools and other property in the building, claimed and owned by the said defendant; also 500 feet lumber lying close to the mill; also the frame dwelling-house, situated and being in Gallatin City, Gallatin County, together with the lands upon which house is situated, and the log house now occupied by J. H. D. Street, in Gallatin City, and all other improvements upon said land, claimed and owned by said defendant W. A. Fredericks.

109 Witness my hand this 9th day of March, A. D. 1875.

C. L. CLARK,
Sheriff.

Defendants next offered in evidence letters from Wellington A. Fredericks to the defendant Davis, the hand writing and signatures are admitted to be genuine, which are numbered from (1) one to eighteen (18), inclusive, all numbered in red ink; which said letters, from one to eighteen, inclusive, are in words and figures following, to wit:

GALLATIN CITY, *May 8th*, 1872.

Mr. A. J. DAVIS:

D'R SIR: I have made up my mind to build the mill on Willow Creek. I want you to fetch bolting cloth for 2 reels, 20 feet long, 36 in. diameter, 6 ribs; it wants No. 10 and 11 for the first reel, No. 9 and 10 for the other. I think you have No. 9 enough for ½ of one reel, and fetch one oats' separator and 1 smut mill. I think the California smut mill is the best. You had better get No. 2 machine. I will want 1 run of mill stones. I would rather have 3½ feet stones, but if you are going to fetch out your old mill burs one of them will answer. I would like to know the length of the spindle so as I can fetch a
110 proof-staff and some mill picks, the balance we can get up here. I

will want a lot of 4-inch leather belting. No news of importance. Sarah and the babies is well, and sends respects. Please write soon.

Yours, truly,

W. A. FREDERICKS.

GALLATIN CITY, *Sep.* 28, 1872.

A. J. DAVIS.

D'R SIR: I have been home all of this week, a rigging up the 4-horse team; will start up to the mill Wednesday or Thursday next; expect to come back by Sunday next with a load of flooring for the house. I think I can fetch enough at one load to lay the lower floors; so, if I can get harness, I will have the lumber down next Sunday. If you have a harness that you can spare, I wish you would send it out. Mr. Galen has some harness here for sale. I was in hopes you could come down this last week. I want to see you in regard to the mill. Drew don't want to go on with his interest, and said he would buy my interest in the saw-mill if I would take my pay in lumber. I have got the mill all framed, and am waiting for teams to move it, but everybody is so busy stacking their grain, that I have been unable to get any of it
111 hauled yet, but I may get some teams soon. Money matters has been so close, that Drew has not been able to send you as much as he expected. He wanted to know if you would wait on him until he could collect; if not, he would have to hire it. J. S. Wilson is waiting to see you in regard to the old mill case. He has failed with his settlement with Thomas. I will expect you up soon.

Yours, truly,

W. A. FREDERICKS.

GALLATIN CITY, *October* 16.

A. J. DAVIS.

D'R SIR: I have just returned from the mill with a load of lumber for Willow Creek. Drew says he has not done as well as he expected, and money is so scarce that it is impossible for him to go on with the grist mill, and wants me to take it off his hands, and I don't see how I can put it up this winter alone. What do you think is best to do with it? If you say stop until spring, all right; or if you say go on, I will do all I can with it; or if you want Drew's interest, you can have it. The frame is all ready to raise, and the tools are all ready, and about all of the lumber is out, ready to move. I have got flooring enough here to lay all of the bottom floors in this house, and *m*ap boards;
112 and if I had the glass and putty and door-hangings, I would get it inclosed. Judge Murphy wants to rent the old house. Answer soon. I will be home Sunday again.

Yours, truly,

W. A. FREDERICKS.

GALLATIN CITY, *Oct.* 21, 1872.

A. J. DAVIS.

D'R SIR: Yours of the 18th is at hand. I would say, in answer, that I feel determined to go ahead with the mill as fast as I can. It has got to go up. Drew says if he hadn't to pay you that thousand dollars, that he could go on with it, but it is going to crowd him very much to pay you. He said that he was willing to go on with the mill as fast as he can after he pays you; and if I wait for that, it will be next year before he will get around. If I had about one thousand dollars, I think

I could get it about ready to start. I am getting it down as fast as I can. I have got all of the lumber here for the house, and will set it up on the land soon. The time is out on the land, and can be entered as soon as I can get the house up. As for Drew, I don't feel like waiting on him any longer, if there is any other way to go on. He is
113 willing that I shall take the lumber and timber that is got out for the mill, and he will take as much more. I expect I could get another party to take Drew's interest, but I don't want any more partners. The farmers say they will hold as much of their wheat as they can, and if it is not gone on with this winter, we will loose all of this crop. Drew has offered me 75 thousand feet of lumber for my interest in the saw-mill. If I get a chance to sell Coley & Belley and Sam'l Billey, harness, and wagon and take it in *hallns* lumber, is it best or not? I shall start for the mill in the morning. If it was not for the grist-mill, I would come up and help you this winter. If I can make a bargain with Drew for the saw-mill, I believe I will let it go.

Yours, truly,

W. A. FREDERICKS.

GALLATIN CITY, *Dec.* 11*th*, 1872.

A. J. DAVIS.

D'R SIR: I have been upon Willow to-day; seen a number of the men. They say if I will go ahead with the mill this winter, they will turn out and dig the mill-pit and race and the dam free of charge. I have not given them any answer yet. What do you think about
114 it? Is the mill-stones and smut-mill come yet? I will go to Bozeman to-morrow for a load of lumber; will be home Saturday; would like to hear from you. When I come back, I think I can get two or three carpenters, and pay them in lumber. The worst that would be is in regard grub. I think I can start it in two months after the foundation is laid. If it is put up, it will get all of the wheat on Willow and Lower Willow. They are gon' on Thomas. He about says to Drew, anything to start the mill. Let me know what you think about it.

Y'rs, truly,

W. A. FREDERICKS.

GALLATIN CITY, *Oct.* 28, 1872.

A. J. FREDERICKS (DAVIS?)

I received your letter yesterday. I shall start to-morrow for Bozeman for a load of lumber and then return to Willow Creek; then to Sterling to get a load of your iron. I will be back here from Sterling about next Saturday; I am very buisy in getting the timber down for the mill, but it is getting so late I am afraid I won't get it up this winter. I will come up next week with your load, if nothing happens, and then we will talk the matter over and see what is best to do about matters in general; do you want that band iron in the shop; may be you had better
115 write and tell me what you will need the most. I don't know how I shall manage about money for expenses. I never saw such times to raise money, and I am strapped.

Yours, truly,

W. A. FREDERICKS.

GALLATIN CITY, *September* 2, 1872.

Mr. A. J. DAVIS:

D'R SIR: I have received 2 letters from you since I went up to the

mill. I came down home yesterday to see you here. I want to make some more inquiries about that water, what has it got, and in *at* case around the wheel timber to the left, what with the gates in it, or has it got to be put in a wooden scrale. I want to frame the decker to hold the wheel this week. I am somewhat lost to know the power and the speed of that wheel; I have nothing to go by but level book, and I don't think it has the same speed nor power as the lefel wheel; if you can find out anything different from lefel conclusion, let me know, as I want to get my other granary up as soon as possible; give me the size of your fling gudgeon for bolt-shaft and convey *our* shaft. I think you have a pattern that will take a 6½ inch wood, which will be about right. I
116 would like to know the size of your bevel wheels patterns, and I may arrange the machine to suit the patterns. I shall get ready to move down on Willow Creek in 15 days. I want to raise all the teams next week I can. I would like to use Belley and Colley on the *am* if you don't need them. Have you got any patterns for a *ve* friction wheel about 2 feet in diameter. I am sorry Mr. Drew has failed to get you that money. As soon as he told you they had bad luck and broke the big band wheel, which has been a great drawback; he is going to make a draw on government to-day for you. Please answer to Bozeman.

Yours, truly,

W. A. FREDERICKS.

GALLATIN CITY, *December 22d*, 1872.

A. J. DAVIS:

D'R SIR: I have received two letters more from you of late. I have just returned home; the weather is very cold and stormy here. I have got all of my lumber away from the mill that is sawed out, and Mr. Wright has agreed to ha*ll* that as soon as it is cut out. I have about 5,000 feet at Foster's to be dressed, but he is froze up, and I don't know whether I will get that or not. I have 4 loads here to take over on Willow Creek. The weather is very cold and if it continues cold I
117 don't think it is best to do anything towards building the mill this winter. I don't that the parties on Willow Creek will bind themselves to do anything, and if they don't, I shan't do anything this winter. I will know more about it when I go upon Willow again. I don't think Drew intends to have anything to do with the mill than he can help. I have not said anything to him of late about the matter. I have got 35,000 feet of lumber on the way and there, for the mill, and there is about 6,000 feet more to deliver. I have not had time to go and see the men that is owing you, but will see them soon. If the weather is not too stormy, I think I can get ready to come over in about two or three weeks from now. If the weather is cold you can't finish your house. It won't make any difference with us. You can use your old office.

Yours, truly,

W. A. FREDERICKS.

I was over to-day and saw Bangs Well; he said that he had sold 2 cows, and the money was due the first of January, and he would send it as soon as he could; he has not threshed any of his grain yet; the roads have drifted very bad this morning; it has stopped the stages.

GALLATIN CITY, *July 8th*, 1873.

A. J. DAVIS:

118 D'R SIR: I received your letter dated the 2nd. I got those

notices and have put them up. I have just come from the saw-mill. Everything is going on very well well there, except there is no money to buy lumber. Drew says it is impossible to sell lumber and get money; he says that he is sure that he will get a bill of government. He is going to send me 2 mechanics in a few days. I have got 4 teams to start next Monday after lumber; in 3 weeks I will have all of my lumber down. I have got the mill raised, and I think half of the dam is in. Drew says the same about the mill as he did last winter; he don't want any interest in the grist-mill, but will help me all that is in his power.

I want you to send from Clark, Conrad and Curtin one keg of 10d nails; 50 lbs. 5 in. spikes; 30 lbs. No. 6 nails; 20 lbs. No. 4 nails; 50 lbs. 5 in. spikes; 30 lbs. No. ; 1 gross of 1½ in. wood screws; 1 gross 2 in. screws. Send five gallons syrup. There will be a team call at Conrad's for it next Friday. You can get all of the belt-gearing *dody* and the 3 upper lengths of the upright shafting, and leave the lower lengths until the water-wheel comes. You can get the spindle and step, and the stones ready, and send all of the gudgeons for the conveyance and bolts shafts soon. I shall need the gudgeons in
119 3 or 4 weeks. I think I shall make some changes in the shafting in the lower story of the mill, but not until I get the water-wheel down, and that I don't expect for 2 weeks yet.

Yours truly,

W. A. FREDERICKS.

GALLATIN CITY, *September 22d*, 1873.

A. J. DAVIS:

D'R SIR: I received yours of the 8th to-day. You did not say anything about shipping any of that machinery. I am ready to use it all, and I want you to ship it as soon as possible. I have got 5 men at work, and can't work but a few days longer without the balance of the machinery. I expect to get it ready to run the last of October. Do you want Mood to start the mill, if he can be got. John Emmerson is here and can be got. I wrote you some 2 weeks ago about the elevator belts: they should be 4½ in. wide or 5 inches, to use those elevator-cups, and I can't put up my elevator-spouts until I know the width of the belt. I sent Mr. Simon the affidavit some time since. Write by return mail. If I can raise the money I would like to come in and have that land entered.

Yours truly,

W. A. FREDERICKS.

WILLOW CREEK, *September 7th*, 1873.

A. J. DAVIS:

120 D'R SIR: I will give you the bill of bolting: 250 feet 5 inches wide, leather, or 4½ in. wood*den*; this bill is for elevators. Please let me know which you will send—let me know soon. 46 feet 3 in., 12 in. wide. This is the stone belt; if you have a No. 1 leather belt you can send it; if not, send gum. 36 ft. 6 or 10 in. wide; this is to drive the upright bin shafting. This will do as well to be leather or gum. 14 feet, 10 in. wide, other, 18 ft., 6 in. wide, other, ten feet, 4 in. wide leather, ½ side string leather; 2 gro. 2½ copper rivits ⅜ in. long; 1 gro. 2½ in. wood screws; 2 dozen wood-screw bolts, ⅜ di., 4 in. long; 1 dozen do., ½ in. diameter, 6 in. long. You may send all of the machinery as soon as you can. The mill is inclosed, and half of the floors are laid, and a

part of the band-wheels are made. I shall have the water-wheel in this week. I have 2 men now; will have 2 more next week, Tuesday, and shall need everything that belongs to the machinery soon. Send 110 elevator cups.

Yours truly,

W. A. FREDERICKS.

Please tell Clark, Conrad, and Curtin to send me 50 pounds 10^{d} nails, and 50 lbs. 8-penny nails. Send it with one of the first teams that you send out with the machinery. Don't forget to send that piece of galvanized iron to make the stone-curl, 14 feet long, 3 in. wide' than the eye of the stone is deep.

121 WILLOW CREEK, *26th*, 1873.

A. J. DAVIS:

D'R SIR: I received your letter to-day. You said nothing about that 2 shoes and the bolt of clothing that was on the bill of the last load, and did not come here. Dunphy has paid the men on your letter and they have gone to Corinne. I wrote them a letter at Bozeman; I supposed they would come back for their *becet;* it is possible that you did not send the bolt-cloth that was not made the 2 shares. I don't miss it; must be a mistake in making out the bill; if you have not sent the bolt cloth, I wish you would do so. I can make it up. In examining the roll I see you have not sent any coarse screening for the tail-end of the reel. You will have to send another piece 12 feet long, 16-in. wide. You may send the big belt for the stone. I may have to grind the burs down with sand and will not do it until I get the belt. Send a piece of string leather; I can't get it here. You did not say anything about a mill scales; do you expect to furnish them, or how are they to be got, and the mill has got to have a stove and pipe, which I expect the mill will have to get. I got an answer from Mood; he was to come down to-day,
but did not come. I don't expect I can make a bargain with him;
122 he will want 6 or 7 dollars a day, and that is more than the mill
can earn the way flour is selling. I can get Emmerson for about one-half that Mood will come for; the farmers in general think Emmerson is as good a miller as Mood, and he wants two-thirds of the tail end. I expect Mood will want all, and that won't do. Give me your opinion on the two men. I think if Mood don't come down this week I will let Emmerson go to work on the burs. In regard to your interest I will think of it, and see what I can do. I want to ask you a question: If I settle up my matters with Drew and get the other half of this mill, will you consent to the trade? Now, I have done all that has been done here this summer, and if I had not the way I have, there would have been nothing done. I have worked very hard to get the mill a going, and have had no help from anybody, only the men that Drew sent down, and I expect to pay these, and if you will consent to exchange Drew for me I think I can make the exchange. I don't wan't any trouble on this mill, and I hope it will be all straightened up without any fuss.

W. A. FREDERICKS.

BOZEMAN, *March the 28th*, 1874.

Mr. A. J. DAVIS:

123 D'R SIR: I received a letter from you some ten days ago, and you say you had not been over to Willow Creek yet, and did not say whether the mill was finished or not. I would like to know if Fredericks can hold me responsible for his debts that he owes on the mill,

as his wife agreed to pay all of them; if they can, I can make myself safe on some of it. I would like to know what to do. I look to you for advice, for I don't want to pay any more debts of the mill, for I will have all I can do to pay your debt this season. Fred's wife wants me to give her another deed from what I have given. I don't know what it is yet. I will let you know what it is, or will it do to take Edwards' advice on it? If you say that Edwards will do, I will let it go at that. Have you and Fredericks had any trouble about the mill? I have not heard of any, but I thought so by her wanting another deed. I wish you would keep me posted as well as you can, so as I won't get into any trouble. I am cutting logs now so as to have them ready as soon as the water comes, and I am not contracting anything only to pay it in lumber so as I can have the avails of the lumber to pay to you. I will write you again as soon as I find out what Mrs. Fredericks wants, and I would like to have you let me know what to do, as soon as you get
124 my letter. I am at the mill most of the time and don't get a chance to come down once a week.

Yours, truly,

W. H. DREW.

MIDDLE CREEK MILLS, *June 17th*, 1873.

Mr. A. J. DAVIS,

D'R SIR: I wrote you some time ago that I would send you some money the first of this month, which was impossible to do. I have been compelled to be at the mill for the last three weeks. The water has been so high it took away my boom, and I lost some 3 or 4 hundred logs, and I had to go below the mill and make another and run in what logs I had banked, then I got another boom ready above the mill and then went down so that I got it in and run in a lot of logs; it dam'ed the creek up so that it run all over around the mill, and I had to watch it night and day, and the creek is falling to-day, and it will take me several days to turn the water out of the road and put one span on my bridge. The mill hasn't run any for three weeks on the account of high water; the creek raised two feet higher this spring than last year. I will have as many logs as I can saw this summer, and it won't cost me more than eight dollars to get the lumber delivered in the yard, and I don't have to pay any money only as lumber is sold for the cash, for any work done. I got a letter from the post to-day to know
125 what I will furnish all the lumber, lath, and shingles for that they may want this summer. I will see them in a few days. As for the grist-mill, I will send as many men as Fredericks says he can use to advantage, as soon as the water goes down so as they can work to advantage. I am as anxious to get the mill started as you are, and am ready to furnish hands or material that is needed. That matter I have looked to Fredericks to see to, and stand ready to fill his orders at any time, but it is necessary for me to attend to the saw-mill in order to be able to pay the expenses between us both. I hope we will be able to get the mill running as soon as you could expect it.

I see by your letter that you think that I do not appreciate your extended favors, which you are very much mistaken; it is my opinion that from the first start that you wanted to help Fredericks and myself get a little start through your kindness. I am satisfied that we will have completed that we have undertaken by the fifteenth of September next. I am very sorry that I have not been able to have paid that note. I know it is right and just that it should have been paid long ago, and I assure you that I am much obliged to you for waiting

126 on me, but I think I will soon be able to settle it up; it has made a great difference with me on the account of the post not using any lumber; the old buildings have all been condemned, and they expect to commence the first of July to build new quarters; if they do, it will require a good deal of lumber, and I am prepared to turn out three thousand feet a day for three months. I am in hopes that I will be able to straighten up things in a short time to your satisfaction.

Yours, truly,

W. H. DREW.

BOZEMAN, *May 1st*, 1874.

Mr. A. J. DAVIS:

D'R SIR: I have just received your letter stating you had been to Willow Creek, but did not find things all right. I wrote to Fred. some time ago about the dam, if it was done, and he wrote me he would have it done by the tenth of May, so as to be sure of high water. As for the balance of the mill, I supposed it was finished. I will write to him and see what he says about it. I am sorry that you did not find your toll all right. I hope there won't be any trouble until you accept of the mill from me. I don't want that woman to make mischief between us. I got to write about those cattle some ten days ago, but have not got any answer yet. I sent my boy over to see him this week, but he has not come back yet. I have paid Edwards fifteen dol-
127 lars. I told him I would pay him the balance as soon as I possibly could get it all. He said he would like it as soon as he could get it. How would you like to trade that note of mine for Fred's interest in the mill or their homestead. I don't know but I could make a trade. I could find out if it would suit you. You spoke of some material being furnished. I would like to have you send me your bill of anything you have furnished that you have against me, so as I may know what to do with Fred., as I settled up all other accounts with you when I was there. The weather has been so bad and men so scarce, I have not started sawing yet. I would like it if you could make a trade for the mill, as it would then avoid all trouble. As for that woman, you know what she is better than I do. As for Fred., he works hard, and if he was in business by himself it would be better. I will write as soon as I hear from Fred.

W. H. DREW.

HAMILTON, *August the 20th*, 1874.

Mr. A. J. DAVIS:

D'R SIR: It has been a long time since I wrote to you. Money is so hard to get that I have not been able to sell anything to get much to send you. I sold ten head of cows to Grannis, and he was to
128 send you the money; and I sold one to-day, and I will send the money when I go to Bozeman. I have quit the mill to cut my grain. I will have enough for bread and seed; it will take about ten days, if it don't rain too much. I have been in hopes that the Jefferson mills would make a market for lumber, but it hain't yet, and I don't see anything that will turn into money this fall. I have not seen Fredericks since you wrote me, but I heard he had the dam up and was running. I wrote to him to give every man a receipt for every lot of grain that was brought into the mill, so as it would agree with the books at the mill. I will go over and see how he is getting along before I go up to the mill again, and will let you know. Now, I would like to

as his wife agreed to pay all of them; if they can, I can make myself safe on some of it. I would like to know what to do. I look to you for advice, for I don't want to pay any more debts of the mill, for I will have all I can do to pay your debt this season. Fred's wife wants me to give her another deed from what I have given. I don't know what it is yet. I will let you know what it is, or will it do to take Edwards' advice on it? If you say that Edwards will do, I will let it go at that. Have you and Fredericks had any trouble about the mill? I have not heard of any, but I thought so by her wanting another deed. I wish you would keep me posted as well as you can, so as I won't get into any trouble. I am cutting logs now so as to have them ready as soon as the water comes, and I am not contracting anything only to pay it in lumber so as I can have the avails of the lumber to pay to you. I will write you again as soon as I find out what Mrs. Fredericks wants, and I would like to have you let me know what to do, as soon as you get
124 my letter. I am at the mill most of the time and don't get a chance to come down once a week.

Yours, truly,

W. H. DREW.

MIDDLE CREEK MILLS, *June 17th*, 1873.

Mr. A. J. DAVIS,

D'R SIR: I wrote you some time ago that I would send you some money the first of this month, which was impossible to do. I have been compelled to be at the mill for the last three weeks. The water has been so high it took away my boom, and I lost some 3 or 4 hundred logs, and I had to go below the mill and make another and run in what logs I had banked, then I got another boom ready above the mill and then went down so that I got it in and run in a lot of logs; it dam'ed the creek up so that it run all over around the mill, and I had to watch it night and day, and the creek is falling to-day, and it will take me several days to turn the water out of the road and put one span on my bridge. The mill hasn't run any for three weeks on the account of high water; the creek raised two feet higher this spring than last year. I will have as many logs as I can saw this summer, and it won't cost me more than eight dollars to get the lumber delivered in the yard, and I don't have to pay any money only as lumber is sold for the cash, for any work done. I got a letter from the post to-day to know
125 what I will furnish all the lumber, lath, and shingles for that they may want this summer. I will see them in a few days. As for the grist-mill, I will send as many men as Fredericks says he can use to advantage, as soon as the water goes down so as they can work to advantage. I am as anxious to get the mill started as you are, and am ready to furnish hands or material that is needed. That matter I have looked to Fredericks to see to, and stand ready to fill his orders at any time, but it is necessary for me to attend to the saw-mill in order to be able to pay the expenses between us both. I hope we will be able to get the mill running as soon as you could expect it.

I see by your letter that you think that I do not appreciate your extended favors, which you are very much mistaken; it is my opinion that from the first start that you wanted to help Fredericks and myself get a little start through your kindness. I am satisfied that we will have completed that we have undertaken by the fifteenth of September next. I am very sorry that I have not been able to have paid that note. I know it is right and just that it should have been paid long ago, and I assure you that I am much obliged to you for waiting

126 on me, but I think I will soon be able to settle it up; it has made a great difference with me on the account of the post not using any lumber; the old buildings have all been condemned, and they expect to commence the first of July to build new quarters; if they do, it will require a good deal of lumber, and I am prepared to turn out three thousand feet a day for three months. I am in hopes that I will be able to straighten up things in a short time to your satisfaction.

Yours, truly,

W. H. DREW.

BOZEMAN, *May 1st*, 1874.

Mr. A. J. DAVIS:

D'R SIR: I have just received your letter stating you had been to Willow Creek, but did not find things all right. I wrote to Fred. some time ago about the dam, if it was done, and he wrote me he would have it done by the tenth of May, so as to be sure of high water. As for the balance of the mill, I supposed it was finished. I will write to him and see what he says about it. I am sorry that you did not find your toll all right. I hope there won't be any trouble until you accept of the mill from me. I don't want that woman to make mischief between us. I got to write about those cattle some ten days ago, but have not got any answer yet. I sent my boy over to see him this week, but he has not come back yet. I have paid Edwards fifteen dol-
127 lars. I told him I would pay him the balance as soon as I possibly could get it all. He said he would like it as soon as he could get it. How would you like to trade that note of mine for Fred's interest in the mill or their homestead. I don't know but I could make a trade. I could find out if it would suit you. You spoke of some material being furnished. I would like to have you send me your bill of anything you have furnished that you have against me, so as I may know what to do with Fred., as I settled up all other accounts with you when I was there. The weather has been so bad and men so scarce, I have not started sawing yet. I would like it if you could make a trade for the mill, as it would then avoid all trouble. As for that woman, you know what she is better than I do. As for Fred., he works hard, and if he was in business by himself it would be better. I will write as soon as I hear from Fred.

W. H. DREW.

HAMILTON, *August the 20th*, 1874.

Mr. A. J. DAVIS:

D'R SIR: It has been a long time since I wrote to you. Money is so hard to get that I have not been able to sell anything to get much to send you. I sold ten head of cows to Grannis, and he was to
128 send you the money; and I sold one to-day, and I will send the money when I go to Bozeman. I have quit the mill to cut my grain. I will have enough for bread and seed; it will take about ten days, if it don't rain too much. I have been in hopes that the Jefferson mills would make a market for lumber, but it hain't yet, and I don't see anything that will turn into money this fall. I have not seen Fredericks since you wrote me, but I heard he had the dam up and was running. I wrote to him to give every man a receipt for every lot of grain that was brought into the mill, so as it would agree with the books at the mill. I will go over and see how he is getting along before I go up to the mill again, and will let you know. Now, I would like to

know what you will do with my mortgage—if you will give me more time, and how long. How much lumber would you take, delivered in Bozeman, this fall and next spring, and how much wheat, delivered at the Willow Creek mill, next fall and a year from next fall? If you can give me until next fall, I want to rent out a part of the ranch to put into wheat, and I would like to know right off; or if you don't, and I can rent it out and let the rent go to whoever owns the rent when
129 the grain comes off. I wish you would write soon, and so as I can get to know what I am to do before I go over to the mill; and if there is anything you want I should do about the mill on Willow Creek let me know. Has Fred. paid any of the indebtedness upon the mill this summer?

Yours, truly,

W. H. DREW.

BOZEMAN, *May the 30th*, 1874.

Mr. A. J. DAVIS:

D'R SIR: I received two letters from you to-day stating that you did not feel willing to accom'odate with that amount of money that I asked for, on the account of the security that you had would not warrant it. It is all right, and, further, you will see that I will try to do what is right. Grannis has not come back yet—the man I let have the beef cattle; he was to have been back the 20th of this month. I did not see him. My son sold them to him on the Yellowstone. I told him to sell them at the Mission, but he was one day too late. I found six cows after I gave you the mortgage, and I sold four of them to Grannis for my own use; all the balance is here, except one steer that strayed, but I will try to find him. Grannis said to my son; that when he came back he wanted to buy all of my cows, and I will try
130 and sell to him all of the cattle; if so, I think I can raise 1,000 dollars. I see that you thought that Edwards was not looking after matters, but I told him how it was; he see that I had not molested any of the stock I had turned out. As for that deed of Mrs. Fredericks, I may have done wrong, but you knew how the first deed was, and the last one was worded the same as the first. I asked the recorder to write you a statement to let you know if there was any difference, and he said he would. You have said that Mrs. Fredericks said that I talked about you, and did not think that I would do what I had agreed to if I could help it. If Fred. and his wife will do what is right as near as I do, I will guarantee that there never will be any trouble. You had ought to know what she is by this time, and take her word for what it is worth. I hope this will be satisfactory to you, and that you will feel satisfied that I am not trying to do anything wrong in our matters of deal. As soon as Grannis comes back you will hear from me again.

Yours, truly,

W. H. DREW.

BOZEMAN, *May the 21st*, 1873.

Mr. A. J. DAVIS:

D'R SIR: I received your letter a few days ago, and I have neglected answering it on the account of my family being sick. I have had
131 to be with them the most of the time for three weeks. My wife and myself have had to sit up with them all the time, and they are not much better yet. I was very glad you answered that matter of

Mr. Perkins, for I could not get anything out of him, for he said he could make a turn with you. I don't think I can send you any money before the first of June. I am anxious to pay the balance of that note. I received a letter from Mr. Fredericks last week, that he was at work; he was at work at the mill. I see you are anxious to have it up. I believe that I have done everything that has been required of me. I have furnished what lumber he called for, and paid for hauling, and paid for carpenters to frame it; and the last letter that I got from Fredericks, at Helena was that he could not do anything more until July, as he did not think he could get a title to the land before then, and he would not do anything until he did. There is but very little doing here; just about enough to pay expenses. There is some talk of commencing work at the post soon, and then times will liven up a little. I have managed to pay my way this winter, so as to be ready to put up that mill as soon as it could be, for it has cost me a good deal,
132 and I don't want to be out of money any longer than I can help. What did that wheel cost?

Yours, truly,

W. H. DREW.

This court, sitting as a jury in said cause, proceeded after the close of the testimony to find the facts, which findings are in the words and figures following, to wit:

Findings of facts.

In the first judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

This cause coming on for trial this 30th day of October, A. D. 1877, before the court sitting without a jury, and a jury having been expressly waived by the parties plaintiff and defendant, and after the reading of the pleadings, the introduction of evidence, and argument of counsel, and the court being fully advised as to the law and the evidence appertaining to said cause, the court finds the facts in said cause, in writing and filed therein, and that *that* the plaintiff Sarah J. Fredericks was the owner of the property mentioned in the complaint
133 in said cause, as sole trader, and that the defendant Charles L. Clark did wrongfully take of said property, upon writs of attachments issued in said cause at the suits of defendant Andrew J. Davis vs. Wellington A. Fredericks, and Andrew J. Davis versus Wellington A. Fredericks and William H. Drew, from the possession of said plaintiff Sarah J. Fredericks two hundred and ninety-five sacks of flour, and that the value thereof was five dollars and fifty cents per sack, and one hundred and seven bushels of wheat of the value of two dollars per bushel, and of said shingles ten dollars in value, and of said lumber of the value of fifty dollars, in all of the value of eighteen hundred and ninety-six dollars and fifty cents.

The court further finds that said plaintiff Sarah J. Fredericks is entitled, as against said defendants Charles L. Clark and Andrew J.

Davis, to the possession of said property, or the value thereof, to wit, $1,896\frac{50}{100}$.

Now, on motion of Messrs. E. W. Toole and J. H. Shober, attorneys for said plaintiffs, it is ordered and adjudged by the court, that said plaintiff Sarah J. Fredericks do have and recover from said defendants Charles L. Clark and Andrew J. Davis the possession of said property hereinbefore described; and if possession thereof cannot be had,
134 then that said plaintiff do have and recover of said defendants the sum of one thousand eight hundred and ninety-six $\frac{50}{100}$ dollars, the value thereof, and her costs in this behalf expended, taxed at $374\frac{75}{100}$ *dollars*; and judgment is hereby rendered in favor of said plaintiff Sarah J. Fredericks, and against said defendants Charles L. Clark and Andrew J. Davis, for the possession of said two hundred and ninety-five sacks of flour, and said one hundred and seven bushels of wheat, and said shingles and lumber, in the pleadings herein described; and if delivery cannot be had, then that said plaintiff Sarah J. Fredericks do have and recover of said defendants the sum of eighteen hundred and ninety-six $\frac{50}{100}$ dollars, the value thereof, and the further sum of $374\frac{75}{100}$ *dollars*, her costs and disbursements in this case expended.

HENRY N. BLAKE,
Judge of said Court.

To which ruling, finding, decision, and judgment of the court the defendants then and there excepted, because the same is contrary to the evidence and against the weight thereof; and that the conclusions of law found therefrom are erroneous, not supported by the proof in said cause, or authorized by the facts so found by the court.

135 That at the same time the defendants submitted findings of facts to said court, and requested him to find in accordance therewith, which said findings are in words and figures following, to wit:

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

Defendants submit and ask the court to find the facts as follows:

1st. That plaintiffs are now and have been long prior to January 1st, 1869, husband and wife.

2nd. That on and prior to the said first day of January, A. D. 1869, the said Wellington A. Fredericks was wholly insolvent, and that his insolvency continues to this date.

3. That the said defendant and the said Wellington A. Fredericks had a demand against Ault & Co., who were the owners of a certain saw-mill situated in Gallatin County, Montana Territory. That for the purpose of securing the said indebtedness, the said Ault & Co. executed to the said A. J. Davis a mortgage on said saw-mill and fixtures. That said mortgage was foreclosed, and the said defendant Da-
136 vis became the purchaser thereof at sheriff's sale; that pursuant to said purchase the sheriff of said county executed to defendant Davis a deed for said mill, machinery, & fixtures, the one-half thereof belonging to said Wellington A. Fredericks.

4. That thereafter the said Davis sold his half interest in said mill,

&c., to one Wm. H. Drew, and executed to said Drew a deed for one-half; and at the request of the said Wellington A. Fredericks, and without any consideration, executed a deed to Sarah J. Fredericks for the other half of said saw-mill.

5. That on or about the year 1872 an agreement was entered into between said A. J. Davis, Wellington A. Fredericks, and the said William H. Drew to build and furnish that certain grist and flouring mill to be situated on Willow Creek, in said Gallatin County, and since known as the Willow Creek mills; by the terms of said agreement the said Davis was to furnish the machinery, and they, the said Drew and Fredericks, were to furnish the lumber and to put up the mill and mill-dam.

6. That in pursuance to said agreement the said mill was completed, and the said Davis became the owner of one-half, and the said Drew and W. A. Fredericks became the owners of the other half.

137 7. That in 1874 the said Fredericks exchanged his interest in said saw mill (the title then being held in the name of his said wife, Sarah J. Fredericks) to the said Drew for his (Drew's) interest in the said grist or flouring mill, and thereafter, without any other consideration, caused the said Wm. H. Drew to convey the one-half of said grist-mill or flouring-mill to the said Sarah J. Fredericks, his said wife as aforesaid.

8. That the said Wellington A. Fredericks has, since the completion of said mill in the winter of 1873, possessed, controlled, and managed the said mill.

9. That the flour and the other property attached by the sheriff in March and April, 1875, is the proceed of said mill.

10. That the said conveyance from the said Drew to the said Sarah J. Fredericks is without consideration and void as to the said defendant and other creditors of the said Wellington A. Fredericks, and was so made with the intent to hinder, delay, and defraud said Davis and other creditors.

11. That the flour and other property so attached as aforesaid is the property of the said W. A. Fredericks, and subject to the payment of his debts.

138 12. That the so-called sole tradership of the said Sarah J. Fredericks is and was a trick and device, the better to enable her to cover up and secrete the property of her said husband, and to hold the same thereunder in trust for his use and benefit.

The court refused to find any of the foregoing facts except the numbered 1st, which is incorporated in the finding duly signed.

HENRY N. BLAKE, *Judge.*

Which said findings were refused and rejected by said court. To the ruling of the court in refusing to find in accordance therewith these defendants at the time excepted.

That thereafter the said court, on the 1st day of November, 1877, proceeded to render judgment against these said defendants, which said judgment is in words and figures following, to wit:

Findings and judgment.

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

139 This cause coming on for trial this 30th day of October, A. D. 1877, before the court sitting without a jury, and a jury having been expressly waived by the parties plaintiffs and defendants, and after reading of the pleadings, the introduction of evidence, and argument of counsel, and the court being fully advised as to the law and the evidence appertaining to said cause, the court finds the facts in said cause, in writing and filed therein, and that *that* the plaintiff Sarah J. Fredericks was the owner of the property mentioned in the complaint in said cause, as sole trader, and that the defendant Charles L. Clark did wrongfully take of said property, upon writs of attachment issued in said cause at the suits of defendant Andrew J. Davis vs. Wellington A. Fredericks, and Andrew J. Davis vs. Wellington A. Fredericks and William H. Drew, from the possession of said plaintiff Sarah J. Fredericks two hundred and ninety-five sacks of flour, and that the value thereof was five dollars and fifty cents per sack, and one hundred and seven bushels of wheat of the value of two dollars per bushel, and of said shingles ten dollars in value, and of said lumber of the value of fifty dollars, in all of the value of eighteen hundred and ninety-six dollars and fifty cents.

140 The court further finds that said plaintiff Sarah J. Fredericks is entitled, as against said defendants Charles L. Clark and Andrew J. Davis, to the possession of said property, or the value thereof, to wit, $\$1{,}896\frac{50}{100}$.

Now, on motion of Messrs. E. W. Toole and J. H. Shober, attorneys for said plaintiffs, it is ordered and adjudged by the court that said plaintiff Sarah J. Fredericks do have and recover from said defendants Charles L. Clark and Andrew J. Davis the possession of said property hereinbefore described; and if possession thereof cannot be had, then that said plaintiff do have and recover of said defendants the sum of one thousand eight hundred and ninety-six $\frac{50}{100}$ dollars, the value thereof, and her costs in this behalf expended, taxed at $\$374\frac{75}{100}$ *dollars* and judgment is hereby rendered in favor of said plaintiff Sarah J. Fredericks, and against said defendants Charles L. Clark and Andrew J. Davis, for the possession of said two hundred and ninety-five sacks of flour, and said one hundred and seven bushels of wheat, and said shingles and lumber, in the pleadings herein described; and if delivery cannot be had, then that said plaintiff Sarah J. Fredericks do have and recover of said defendants the sum of eighteen hundred and ninety-six $\frac{50}{100}$ dollars, the value thereof, and the further sum of $\$374\frac{75}{100}$ *dollars*,

141 her costs and disbursements in this case expended.

(To the rendering of the said judgment these defendants at the time duly excepted.)

(The court sustained objections to further questions of flour that was sold to Hall:

I had 160 sacks of flour as my toll in '75, and may be 20 sacks more. My toll amounted to this from April 1st, 1874, to March, 1875. I never

heretofore testified that from spring, '74, to spring of 1875 I sent 400 sacks of flour to Helena. I sent 50 sacks of flour to Hall during this time, and this was all I did send him during that time.)

That said plaintiffs next offered in evidence the judgment roll and records in the case of Sarah J. Fredericks and Wellington A. Fredericks vs. Andrew J. Davis and Caleb Gilbert, which said judgment roll and records of said cause are in words and figures following:

In the district court of the first judicial district of the Territory of Montana, in and for the county of Gallatin.

SARAH J. AND WELLINGTON A. FREDERICKS, plaintiffs,
vs.
ANDREW J. DAVIS AND CALEB GILBERT, defendants.

142 I, the undersigned, clerk of the district court of the first judicial district of said Territory, in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in judgment book 3 of said court, at page 381; and I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action.

Witness my hand and the seal of the district court, this 19th day of May, A. D. 1877.

SEAL OF DIST. COURT, 1ST JUD. DIST., GALL. COUNTY, M. T.

THEO. MUFFLY, *Clerk*,
By AMIE J. MALIN,
Dep. Clerk.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
ANDREW J. DAVIS AND CALEB GILBERT AND Wellington A. Fredericks.

This cause came on regularly to be heard on trial, on the question of title and partition of the property mentioned in the complaint herein, this 14th day of May, A. D. 1877, E. W. Toole, esq., and J. H. Shober, esq., appearing as counsel for the plaintiff, and Messrs. Chumasero, Spratt, Woolfolk, Vivion, and Edwards for the defendant Andrew J. Davis; and a jury of twelve men having been regularly empannelled
143 and sworn in said cause, and the jury hearing the evidence, arguments of counsel for the respective parties, and the instructions of the court, retired under a sworn officer to deliberate on their verdict in said cause, and on the 16th day of May, A. D. 1877, the said jury returned their verdict in said cause, which is in the words and figures following, to wit:

Verdict.

In the district court of the first judicial district of Montana Territory, in and for the county of Gallatin.

SARAH J. FREDERICKS & WELLINGTON A. Fredericks, plaintiffs,
vs.
ANDREW J. DAVIS & CALEB GILBERT, defendants.

Issues submitted by the court for special verdict:

1. Who owned the property in controversy in this action at the time this action was commenced?

Answer. A. J. Davis and Sarah J. Fredericks.

2. What interest or share in said property was then owned by the plaintiff Sarah J. Fredericks?

Answer. One-half interest.

3. What interest or share in said property was then owned by the defendant Andrew J. Davis?

Answer. One-half interest.

144 4. What interest or share in said property was then owned by the defendant Caleb Gilbert?

Answer. Such interest as is specified by the mortgage.

5. What interest or share was then owned by Wellington A. Fredericks?

Answer. None.

E. M. DAVIDSON, *Foreman.*

Which said special findings and verdict is hereby approved by the court.

Now, on motion of Messrs. Toole & Shober, attorneys for plaintiff, it is ordered, adjudged, and decreed by the court that Sarah J. Fredericks is the sole owner, as of her own right, of an undivided one-half interest in and to the property mentioned in the complaint herein, and known and described as a certain flouring-mill, situate at the upper end of Lower Willow Creek Valley, on the northeast quarter of the southeast quarter of section seven (7), township one south, of range one, east, with all the tools, implements, water right, mill-dam, and all the appurtenances thereunto belonging, all in the county of Gallatin, Montana Territory; and that Andrew J. Davis is the owner of an undivided one-half interest in and to said property. And it is

145 further ordered, adjudged, and decreed that said Caleb Gilbert has a lien on said undivided interest of the plaintiff in this action, by virtue of a certain mortgage on said undivided interest, for the sum of four thousand dollars, which said lien attached to said property on the 22d day of June, A. D. 1874, which said amount bears legal interest from date. It is further ordered and adjudged by the court that a division of said property is impracticable, and cannot be had without injury to the parties interested. It is therefore ordered, adjudged, and decreed by the court that said property hereinbefore described be sold at public sale, as prescribed by law and the practice of the court, by the sheriff of Gallatin County, Montana Territory, who is hereby appointed referee to make such sale; that said sale be had at the front door of the court-house, at the town of Bozeman, in the county of Gallatin, Montana Territory, on the 22nd day of October, A. D. 1877, at one o'clock p. m., and that said property be sold to the highest bidder for cash in hand; that said sheriff and referee bring the money realized from the sale of said property into this court, and make due report of his proceedings in relation to the sale of said property; that the proceeds of said sale be applied under the direction of the court:

146 1. To the payment of the costs and disbursements incurred in this action.

2. The costs of said sale.

3. That the residue of the one-half interest of said Sarah J. Fredericks be applied in the said mortgage of the said Caleb Gilbert, and that the balance be paid over to the respective parties hereto, in accordance with their respective interests. And it is further ordered, adjudged, and decreed by the court that the said Sarah J. Fredericks have and recover of the said Andrew J. Davis her costs and disburse-

ments necessarily incurred in defending and establishing her right to the undivided interest in said property, contested in this cause by said Andrew J. Davis, taxed at one hundred and sixty and $\frac{80}{100}$ dollars.

Given under my hand, this 17th day of May, A. D. 1877.

HENRY N. BLAKE, *Judge.*

To the introduction of the same the said defendants objected, upon the ground of irrelevancy, and for the additional reasons that the said cause and the judgment rendered therein had been appealed to the supreme court of this Territory, the said cause as appealed not having been determined by said supreme court.

147 Incorporate all amendments filed Nov. 26, 1877, and allowed by me Dec. 7, 1877.

HENRY N. BLAKE, *Judge.*

And afterwards, to wit, on the 15th day of November, A. D. 1877, the said defendants filed in the office of the clerk of the said district court their bill of exceptions in this cause, which said bill of exceptions was then, by direction of the judge of said district court, filed as of the 26th day of November, A. D. 1877; which bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

SARAH J. FREDERICKS, PLAINTIFF,
vs.
CHARLES L. CLARK, SHERIFF, &C., DEFENDANTS. } 132.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants. } 166.

Be it remembered that the said Sarah J. Fredericks having filed her amended complaint in this court against the above-named defendant, Charles L. Clark, sheriff, &c., which said amended complaint is

148 in the words and figures following, to wit:

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS, WITH WHOM IS ASSOCIATED Wellington A. Fredericks, her husband, as plaintiffs.
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

The plaintiff Sarah J. Fredericks, for amended complaint herein, by leave of the court first had and obtained, states:

1. That on the 8th day of March, A. D. 1875, she was, and for a long time previous thereto she had been, and now is, a married woman, and the wife of Wellington A. Fredericks, her coplaintiff above named. That on the 8th day of March, A. D. 1875, at the county of Gallatin and Territory of Montana, this plaintiff Sarah J. Fredericks was the

sole and exclusive owner and possessor in her own right, as sole trader, of the following goods and chattels, to wit: Two hundred and eighty-two sacks XXX (trible X) flour of the "Willow Creek Flouring Mill" make and brand, and one hundred and seven bushels of wheat, and five hundred feet of pine lumber; that said flour and wheat was
149 of the value of two thousand two hundred dollars, and said lumber was of the value of thirteen ($13.00) dollars.

3. That the defendants, on the 8th day of March, A. D. 1875, while this plaintiff was the sole and exclusive owner of said property at the said county of Gallatin and Territory of Montana, without this plaintiff's consent, did wrongfully and unlawfully take said goods and chattels from the possession of this plaintiff Sarah J. Fredericks.

4. That before the commencement of this suit, to wit, on the 31st day of March, A. D. 1875, this plaintiff demanded possession of said goods and chattels of said defendants, but said defendants refused to deliver possession of the same or any part thereof, notwithstanding this plaintiff was then and now is entitled to the possession of the same.

5. That said defendants do now wrongfully and unlawfully withhold and detain possession of said property, goods, and chattels from the possession of this plaintiff, to her damage in the sum of two hundred dollars.

Wherefore this plaintiff Sarah J. Fredericks demands judgment against said defendants: 1st. First, for the recovery of the possession of said property, goods, and chattels, or for the sum of two thousand two hundred and thirteen dollars ($2,213.00), the value thereof, in case delivery cannot be had.

150 2. Second, for two hundred dollars damages and for costs of suit.

JOHNSTON & TOOLE, AND
J. H. SHOBER.
Plaintiffs' Attorneys.

MONTANA TERRITORY,
Gallatin County:

Sarah J. Fredericks, being duly sworn, says she is one of the plaintiffs in the above-entitled action, and that she has heard read the foregoing amended complaint, and knows the contents thereof, and that the same is true of her own knowledge.

SARAH J. FREDERICKS.

Subscribed and sworn to before me, this 3rd day of May, A. D. 1876.
JAMES G. DOW,
Notary Public.

And afterwards, to wit, on the 26th day of May, A. D. 1876 the said, defendants filed herein his amended answer, of which said answer, in words and figures, the following is a copy, to wit:

Amended answer.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

Now come the above-named defendants, by their attorneys, and

151 for answer to the amended complaint of the plaintiffs filed herein deny each and every allegation in the said complaint contained.

Defendants deny that on the 8th day of March, A. D. 1875, or at any other time, at the county of Gallatin and Territory of Montana, or elsewhere, the said plaintiff Sarah J. Fredericks was the sole or exclusive owner or possessor in her own right, as sole trader or otherwise, of the goods or chattels set out and attempted to be described in plaintiffs' said complaint. Deny that the defendants or either of them ever at any time wrongfully or unlawfully took said or any goods or chattels from the possession of said plaintiff Sarah J. Fredericks.

Deny that before the commencement of this suit the said plaintiff demanded of defendants the possession of said goods or chattels, or any thereof.

Deny that said plaintiff was or is entitled to the possession of said goods or chattels, or any thereof.

Deny that defendants do now wrongfully or unlawfully withhold or detain possession of said property, goods, or chattels from the possession of the said plaintiff, in her damage in the sum of two hundred dollars or in any other sum.

The defendants, for further answer, aver that on or about the
152 8th day of March, A. D. 1875, the said defendant Charles L. Clark was sheriff of Gallatin County, in said Territory, and that on or about the date last aforesaid, as such sheriff, the said defendant Clark, under and by virtue of two several writs of attachment issued out of the office of the clerk of the district court in said county of Gallatin, one in a case then pending in said court wherein Andrew J. Davis was plaintiff and W. A. Fredericks and W. H. Drew were defendants, and one in a case therein pending wherein the said Andrew J. Davis was plaintiff and Wellington A. Fredericks was defendant, said writs being dated the 6th day of March, 1875, did seize and levy upon, as the property of Wellington A. Fredericks, the defendant in said writs of attachment and one of the plaintiffs herein, certain goods and chattels, consisting of flour and lumber, a portion of which is attempted to be described in plaintiffs' said amended complaint, but a particular description of said property seized by said defendant, as sheriff as aforesaid, is attached to and endorsed on the writs of attachment aforesaid, reference being had thereto.

Defendants further aver that the goods and chattels so levied upon as aforesaid, at the time aforesaid, under and by virtue of the writs aforesaid, were at the time of said levy the property of the said
153 Wellington A. Fredericks, one of the plaintiffs to this action, and that if the said plaintiff Sarah J. Fredericks ever at any time had possession of any of said goods and chattels, or of the goods and chattels set forth in plaintiffs' said amended complaint, the defendants aver that such possession was a fraudulent one, and that the same were held by her for said Fredericks under cover, to conceal the same from the creditors of the said Wellington A. Fredericks, and to defraud the said defendant Andrew J. Davis and other creditors of said Fredericks, and prevent the collection of just debts of said Davis and others against W. A. Fredericks. Defendants deny that the said plaintiff Sarah J. Fredericks has sustained any damage whatever by reason of the acts of these defendants. And having fully answered, the defendants ask to be dismissed, with their costs herein expended.

T. R. EDWARDS & SAM'L. WORD,
Att'ys for Plaintiffs.

TERRITORY OF MONTANA,
County of Lewis & Clarke, ss:

Andrew J. Davis, being first duly sworn, on his oath says that he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the
154 facts therein stated are true of his own knowledge.

(Signed) ANDREW J. DAVIS.

Subscribed and sworn to before me, this May 26th, A. D. 1876.

{ SEAL OF 3D JUD. DIST. COURT OF M. T. } ALEX. H. BEATTIE,
Clerk of the 3rd Jud. District Court, M. T.,
By JNO. N. HELDT,
Deputy Clerk.

And afterwards, to wit, on the 27th day of May, A. D. 1876, the said plaintiff filed herein her replication to the said answer of defendant, which said replication is in the words and figures following, to wit:

Replication.

In first judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

Now comes the plaintiff, and for replication to defendants' answer herein:

1st. Denies that at the time of the levy of the attachment herein, or at any other time, Wellington A. Fredericks was the owner of or had any interest in any of the property mentioned in plaintiffs' complaint herein. Deny that any of said property in plaintiffs' complaint
155 mentioned was ever held by Sarah J. Fredericks for the purpose of covering up the same from defendant A. J. Davis, or any creditor of Wellington A. Fredericks.

3. Deny that said property was ever held by said Sarah J. Fredericks in fraud of any creditor of said Wellington A. Fredericks, or to hinder or delay any creditors of said Wellington A. Fredericks.

Wherefore plaintiff demands judgment, as in her complaint herein prayed for.

JOHNSTON & TOOLE,
J. H. SHOBER, AND
SANDERS & CULLEN.
Attorneys for Plaintiff.

MONTANA TERRITORY,
Gallatin County:

Sarah J. Fredericks, being duly sworn, says she is plaintiff in the above-entitled action, and that she has heard read the foregoing replication and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information and belief, and as to those matters she believes it to be true.

SARAH J. FREDERICKS.

Subscribed and sworn to before me, this 27th day of October, A. D. 1876.

J. H. SHOBER,
Notary Public, M. T.

156 And the said Sarah J. Fredericks and Wellington A. Fredericks having commenced this suit in this court against Charles L. Clark and Andrew J. Davis, filed herein their complaint, of which, in words and figures, the following is a copy, to wit: (Here insert same.) Which see at pages 10 to 12.

That thereafter the said defendants filed their answer to said complaint, which said answer is in the words and figures following, to wit: Which see at pages 13 to 18.

That thereafter the said plaintiffs filed their replication to said answer, which said replication is in the words and figures *figures* following, to wit: (Here insert replication.) Which see at pages 19 to 23.

That afterwards, to wit, on the 11th day of May, A. D. 1877, and at the May term, 1877, of this district court, an order was duly made herein consolidating the two foregoing actions. (Here insert order.) Which see at pages 24 to .

Said causes thereafter were proceeded with in said court un-
157 der the title of the causes of "Sarah J. Fredericks and Wellington A. Fredericks, as plaintiffs, and Charles L. Clark and Andrew J. Davis, defendants."

On appeal, the defendants submit the following statement:

SARAH J. FREDERICKS ET AL., PLAINTIFFS,
vs.
CHARLES L. CLARK, SHERIFF, DEF'T,

and

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, def'ts.

Plaintiffs' testimony.

SARAH J. FREDERICKS, one of the plaintiffs, testified as follows, to wit: Which see pages 25 to 29; cross-examination, pages 29 to 31, with exception.

Defendant CHARLES L. CLARK was here introduced as a witness, was duly sworn, and testified, on oath, as follows: Which see at pages 31 to 33.

Defendant ANDREW J. DAVIS was then introduced as a wit-
158 ness on part of defendants, was duly sworn and examined on oath, and testified as follows, to wit: Which see testimony at pages 34 to 38.

Defendant Charles L. Clark was recalled on part of defendants, and examined as a witness, and testified as follows, to wit: Which see testimony at pages 38 to 39; cross-examination at page 39.

W. V. RYAN was then introduced as a witness, was sworn and examined, and testified on oath as follows, to wit: Which see testimony at pages 39 to 40; cross-examination at page 39.

MARSHALL COURSIEN was introduced as a witness, duly sworn and examined, and testified on oath as follows, to wit: Which see testimony at page 40; cross-examination at page 40.

C. W. HASKINS was then introduced as a witness, duly sworn and examined, and testified on oath as follows, to wit: Which see testimony at page 40.

Rebuttal testimony by plaintiffs.

ELLISON was introduced, sworn and examined, and testified as follows, to wit: Which see testimony at pages 40 to 42.

JOHN W. GRANNIS was then introduced as a witness, duly
159 sworn as such, and, on examination, testified as follows, to wit: Which see testimony at pages 42 to 43.

MIKE LANE was then introduced as a witness, and testified as follows, to wit: Which see testimony at page 43.

W. V. RYAN was then examined. Which see testimony at page 43.

WATTS. Which see testimony at pages 43 to 44.

Mrs. FREDERICKS. Which see testimony at pages 44 to .

The deed from W. H. Drew to Mrs. Fredericks is here admitted in evidence. Which see at pages 46 to 48.

The pleadings in the title case were here introduced. Which see at pages from 49 (and objected to. Objection overruled, and ruling excepted to).

(Here insert copies of all letters introduced by plaintiff from Davis; also all documentary introduced by plaintiff. Which see affidavit, sole traders, &c., at page 72; receipt of Arick, 76; receipt of Lyman, 76; account of R. E. Arick, 76; account of A. J. Davis at pages 77 to
160 83; receipts of A. J. Davis to W. H. Drew & W. A. Fredericks, 83; lease of A. J. Davis to W. A. Fredericks, 84; deed from A. J. Davis to W. H. Drew and Sarah J. Fredericks, 84 & 85; account of Messrs. Toole & Toole, 85 & 86; letters of plaintiff from A. J. Davis, 86 to 90; agreement of Davis and Drew to build the mill, at pages 91 to 93.

Defendants next introduced in evidence the complaint, affidavit, and writ of attachment based thereon, and the sheriff's return thereon, in the two cases of Andrew J. Davis vs. Wellington A. Fredericks, and Andrew J. Davis vs. Wellington A. Fredericks and William H. Drew, which are in words and figures following: (Here insert the same.)

Which see complaint at pages 93 to 95; summons, 95 to 97; affidavit, 97 to 98; writ of attachment, 98 to 99; sheriff's return, 99 to 100; complaint, 101; summons, 103 to 105; affidavit, 105 to 106; writ of attachment, 106 to 107; sheriff's return, 107 to 109.

161 Defendants next introduced in evidence letters from Wellington A. Fredericks to the defendant Davis—the handwriting and signatures are admitted to be genuine—which are numbered from one (1) to eighteen (18), inclusive, all numbered in red ink, which said letters, from one to eighteen, inclusive, are in words and figures following, to wit: (Here insert said letters.) Which see said letters at pages 109 to page 132.

This court, sitting as a jury in said cause, proceeded after the close of the testimony to find the facts, which finding is in words and figures following, to wit: (Here insert findings.) Which see said findings at pages 132 to page 134.

And the law thereon to the findings of said facts the defendants at the time excepted, because the same is contrary to the evidence and against the weight thereof, and that the conclusions of law found therefrom are erroneous, not supported by the proof in said cause or authorized by the facts so found by the court.

That at the same time these defendants submitted findings
162 of fact to said court and requested him to find in accordance therewith, which said findings are in words following: (Here insert the same.) Which see at pages 135 to 138.

Which said findings were refused and rejected by said court. To the ruling of the court in refusing to find in accordance therewith thes' defendants at the time excepted.

That thereafter the said court, on the 1st day of November, 1877, proceeded to render judgment against these said defendants, which said judgment is in words and figures following, to wit: (Here insert the same.) Which see said judgment at pages 139 to page 141.

To the rendering of the said judgment these defendants at the time duly excepted.

The said plaintiffs next offered in evidence the judgment roll and records in the case of Sarah J. Fredericks and Wellington A. Fredericks vs. Andrew J. Davis and Caleb Gilbert, which said judgment roll and records of said cause are in words and figures following, to wit: (Here insert same.) Which see said judgment rolls and records above mentioned at pages 141 to page 146.

163 To the introduction of the same the said defendants objected upon the grounds of irrelevancy, and for the additional reason that the said cause and the judgment rendered therein had been appealed to the supreme court of this Territory, the said cause on appeal not having been determined by said supreme court.

Incorporate all amendments filed November 26th, 1877, and allowed by me Dec. 7, 1877.

HENRY N. BLAKE, *Judge.*

And afterwards, to wit, on the 1st day of November, A. D. 1877, the said defendants filed in the office of the clerk of the said district court their notice of appeal in said cause, which said notice of appeal is in the words and figures following to wit:

Notice of appeal.

In the district court of the 1st judicial district in and for Gallatin County, Montana Territory.

SARAH J. FREDERICKS
vs.
CHARLES L. CLARK, SHERIFF. } 132.

AND

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks
vs.
164 CHARLES L. CLARK AND ANDREW J. Davis. } 166. Notice of appeal.

To the above-named plaintiffs and Messrs. Johnston & Toole and J. H. Shober, their attorneys:

You will please take notice that said defendants in the above-entitled action hereby appeal from the judgment, and every part thereof, rendered in said court on the 1st day of November, 1877, in favor of the plaintiffs and against said defendants, to the supreme court of Montana.

SAM'L WORD,
JAMES G. SPRATT, &
T. R. EDWARDS,
Att'ys for Defendants.

Received copy of the within notice this 1st day of November, 1877.
E. W. TOOLE & J. H. SHOBER,
Att'ys for Plaintiff.

And afterwards, to wit, on the 2nd day of November, A. D. 1877, the said defendants filed in the office of the clerk of the said district court their undertaking on appeal and to stay the execution of the said judgment, which undertaking was on the day and year last aforesaid duly approved by the clerk of the said district court, which said undertaking is in the w'rds and figures following, to wit:

165 *Undertaking on appeal.*

In the district court of the 1st judicial district, in and for Gallatin County, Montana Territory.

SARAH J. FREDERICKS
vs.
CHARLES L. CLARK, SHERIFF, } 132.
AND
SARAH J. FREDERICKS AND WELLINGTON A Fredericks
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS. } 166. } Consolidated.

Whereas the defendants in the above-entitled consolidated actions have given notice to said plaintiffs of their appeal to the supreme court of Montana Territory from a judgment made and entered against said defendants in said consolidated acotins in the said district court in favor of the said plaintiffs in said action, on the 1st day of November, A. D. 1877, for one thousand eight hundred and ninety-six & $\frac{50}{100}$ dollars damages, and four

hundred and thirty-eight dollars costs of suit: Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, resident householders of Gallatin County and Montana Territory,
166 do hereby jointly and severally undertake and promise on the part of the appellants that the said appellants will pay all damages and costs which may be awarded against them on the appeal, not exceeding three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

And whereas the appellants are desirous of staying the execution of the judgment so appealed from, we do further, in consideration thereof and of the premises, jointly and severally undertake, promise, and do acknowledge ourselves further jointly and severally bound in the further sum of four thousand and six hundred and sixty-nine dollars, being double the amount named in the said judgment, that if the said judgment appealed from, or any part thereof, be affirmed, the appellant shall pay plaintiffs the amount directed to be paid thereby, or the part of such amount as to which the same shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. Interlineations made before signing.

Witness our hands and seals, this 2nd day of November, A. D. 1877.

A. LAMME. [SEAL.]
LESTER S. WILLSON. [SEAL.]

167 TERRITORY OF MONTANA,
Gallatin County, ss:

We, A. Lamme and Lester S. Willson, being duly sworn, each for himself, says that he is a resident householder and a merchant by occupation in said county and Territory, and that he is worth the sum of five thousand dollars over and above all just debts and liabilities and property by law exempt from execution.

A. LAMME.
LESTER S. WILLSON.

Subscribed and sworn to before me, this 2nd day of November, A. D. 1877.

THEO. MUFFLY, *Clerk.*

That afterwards, to wit, on the 15th day of December, A. D. 1877, the said defendants filed in the office of the clerk of said district court their præcipe for transcript on appeal herein, which said præcipe is in words and figures following, to wit:

Præcipe for transcript.

In the district court of the 1st judicial district in & for Gallatin County and Montana Territory.

SARAH J. FREDERICKS, PLAINTIFF, *vs.* CHARLES L. CLARKE, SHERIFF, DEFENDANT, } 132.

168 AND

SARAH J. FREDERICKS AND WELLINGTO' A. FREDERICKS *vs.* CHARLES L. CLARK AND ANDREW J. DAVIS. } 166.

} Consolidated.

To the clerk of the said district court:

You will please make out a transcript of the above-entitled cause for

the supreme court, and insert therein the bill of exceptions and statements on file in said cause, and all papers, orders, judgments, and records inserted or included in said bill of exceptions or statement, or referred to therein, notice of appeal, and undertaking on appeal.

T. R. EDWARDS,
Att'y for Defendant.

TERRITORY OF MONTANA,
County of Gallatin, ss:

I, Theo. Muffly, clerk of the district court of the first judicial district of Montana Territory, in and for the county of Gallatin, do hereby certify that the foregoing 146 pages, numbered from 1 to 146, inclusive, contain a full, true, and correct transcript of certain of the pleadings, records, and proceedings filed, made, and had in said court in the cause of Sarah J. Fredericks, plaintiff, against Charles
169 L. Clark, sheriff, &c., defendant, and Sarah J. Fredericks and Wellington A. Fredericks, plaintiffs, against Charles L. Clark and Andrew J. Davis, defendants, consolidated cases.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Bozeman City, this 8th day of January, A. D. 1878.

{ SEAL DIST. C'T 1 JUD. DIST., } THEO. MUFFLY, *Clerk.*
{ GALLAINT CO., M. T. } By AMIE J. MALIN,
Deputy Clerk.

170 In the supreme court, Montana Territory, January term, A. D. 1878.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs and respondents,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants & appellants. } 270.

Be it remembered that in the present term of January, in the year of our Lord one thousand eight hundred and seventy-eight, the above-entitled action was brought into this supreme court from the district court of the first judicial district of said Territory, in and for Gallatin County, by virtue of an appeal from the judgment rendered and entered therein by said district court in favor of said plaintiffs and respondents and against said defendants and appellants, agreeably to the statute of said Territory, and the rules of said supreme court in such case made and provided.

And thereafter, to wit, on the 21st day of January, A. D. 1878, the said appellants filed herein a supplemental transcript of record containing certain findings of fact of the court below in said cause, of which said transcript of record the following is a copy, to wit:

171 *Supplemental record.*

In 1st judicial district court, Gallatin County, Montana Territory.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants.

This cause coming on to be heard before the court this 31st day of

November, A. D. 1877, a jury having been expressly waived by the parties plaintiffs and defendants in open court, and after hearing the evidence in said cause and arguments of counsel for the respective parties plaintiffs and defendants the court finds the following as findings of fact in said cause:

1st. That the plaintiff Sarah J. Fredericks, at the time the said property is alleged to have been taken which is described in the complaint in the two actions consolidated herein, was owner of the following portion thereof as sole trader, and in the possession of the same, to wit: 295 sacks of flour, worth $5.50 per sack; 107 bushels of wheat, and that the same was worth two dollars per bushel; shingles of the value of $10.00; lumber of the value of $50.00. That all of said property
172 was of the value of one thousand eight hundred and ninety-six dollars and fifty cents.

2. That the said property was taken by the defendant C. L. Clark, as sheriff of Gallatin County, by virtue of two writs of attachment procured by defendant A. J. Davis, at the suit of Andrew J. Davis vs. Wellington A. Fredericks and William H. Drew, and Andrew J. Davis vs. Wellington A. Fredericks.

3. That said property was converted by said defendants, and the money realized therefor detained by them.

4. That plaintiff claimed to be the owner of said property in March, A. D. 1875, when the same was taken by defendants, and demanded possession thereof from said defendants in March, A. D. 1875, after the same had been taken by them.

5. The court finds no damages for plaintiff for the detention of said property, and allows the plaintiff no interest on the value of said property from the date of the conversion thereof, which was the 15th day of April, A. D. 1875.

6. That plaintiffs, since January 1, A. D. 1869, have been husband and wife.

The court orders judgment in favor of said plaintiff Sarah J. Fredericks, and against said Charles L. Clark and Andrew J. Davis, for a return of said property, and if return thereof cannot be had, then for the sum of one thousand eight hundred and ninety-six dollars
173 and fifty cents, and for costs of suit.

HENRY N. BLAKE, *Judge.*

TERRITORY OF MONTANA,
County of Gallatin, ss:

I, Theo. Muffly, clerk of the first judicial district court of Montana Territory, in and for the county of Gallatin, do hereby certify that the foregoing on pages from 1 to 3, inclusive, contain a full, true, and correct copy of the court's findings of fact in the case of Sarah J. Fredericks and Wellington A. Fredericks, plaintiffs, against Charles L. Clark and Andrew J. Davis, defendants, and that said findings of fact were omitted in the original transcript to the supreme court of Montana Territory in said cause, which said original transcript is now on file in the office of the clerk of said supreme court.

In witness of which I hereunto set my hand and affix the seal of said court, this 11th day of January, A. D. 1878.

SEAL OF THE DIST. COURT 1ST JUD. DIST., GALLATIN COUNTY, M. T.

THEO MUFFLY, *Clerk,*
By AMIE J. MALIN,
Deputy Clerk.

And on the same day the said appellants filed herein their brief of

points and authorities, of which, in words and figures, the following is a copy, to wit:

174 *Argument of appellant.*

In the supreme court of the Territory of Montana, January term, A. D. 1878.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs and respondents,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants and appellants.

This is an action to recover certain personal property alleged to have been wrongfully taken and withheld by defendants. The answer, denying the averments of the complaint, set up also a fraud on the part of plaintiffs in *in* their claim upon the property; admits the taking of the property by virtue of certain writs, as the property of one of the plaintiffs; avers that the same was fraudulently held and claimed by Sarah J. Fredericks, that her sole tradership, by virtue of which she claimed to hold the property, was a fraud, a trick, and device to cover up the property of plaintiff W. A. Fredericks, and to deceive, defraud, and delay the creditors of W. A. Fredericks, whose property the said answer avers the property in suit to have been at the time of seizure.

(See answer, pp. 11 to 16, inclusive.)

Among the issues presented by the pleadings is one of a fraud on part of plaintiff Sarah J. Fredericks.

175 The court below erred in not finding upon the issue of fraud tendered by the answer and replication. In this the findings are totally defective.

(See Farrar vs. Lyon, 19 Mo., 122; 7 California, 137; 10 California, 411.)

The court fails to find the amount of lumber and shingles taken by defendants; the court only finds the value of an indefinite amount. This is error, and plaintiffs to that extent were not entitled to a judgment.

(See 30th of California, page 419.)

Facts are averred by defendants in their answer materially affecting the rights of the parties, which have been entirely overlooked by the court in its findings, although findings thereon were requested by defendants. This is error, and ground of reversal.

(See Downing vs. Bowlier, 21 Mo., 149.)

The facts put in issue should be found, not the evidence or conclusions of law, and the findings must cover all the issues.

(See Cod. Statutes; Bates vs. Bower, 17 Mo., 550; Walsh vs. Edmonson, 19 Mo., 142; Farrar Lyon, 19 Mo., 122; Javen vs. Harris, 20 Mo., 262; 24 Missouri, 343.)

176 There is no evidence to support the findings of the court as made, and the court should have found on the issues presented, as requested by defendants.

(See transcript, pages 123 to 125.)

There appear two sets of findings in this case, none of which are supported or justified by the evidence.

(Transcript, pages 120 to 122. See supplemental transcript appended.)

The court erred in admitting in evidence the pleadings, record, and judgment-roll in the case of Sarah J. Fredericks and W. A. Fredericks vs. A. J. Davis and Caleb Gilbert, because the said cause was then pending in the courts of the Territory, and no final judgment had been rendered therein.

(See 33 California, page 474.)

The court below, in this case, seems to have deviated from that rule usually observed in courts of law in this country, which allows one party to cross-examine a witness called by the opposite party.

(See transcript, pages 24, 25, 26, and 27.)

The right to cross-examine a witness does not rest in the discretion of the court, but it is a legal right of which a party should not be deprived. In this particular it is respectfully suggested that the court has committed error. Some interesting suggestions as to the right of cross-examination, eminating from respectable legal authority, may be found in 14 Cal., 18. The case was not tried to a jury, and it
177 was the plaintiff herself that the court refused to allow defendants to ask certain questions, many of which were eminently proper and material, and correct cross-examination. Answers to the questions put may have shown that the plaintiffs had really no right or claim upon the property in question.

SAMUEL WORD,
Of Counsel for Defendants.

And afterwards, to wit, on the 23d day of January, A. D. 1878, the said plaintiffs and respondents filed herein their brief of points and authorities, of which, in words and figures, the following is a copy, to wit:

Respondents' brief.

In the supreme court of the Territory of Montana, January term, A. D. 1878.

SARAH J. FREDERICKS ET AL., PLAINTIFFS & respondents,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants and appellants.

The issue of fraud was fully presented and determined by the court in finding that plaintiff, as sole trader, was the owner of, in possession, and entitled to the possession of the property in controversy at the time of the seizure by the sheriff.

178 2. Besides, the court was not requested to find upon the question of fraud. It is true that defendants did ask the court to find affirmatively that there was fraud, but this is not sufficient. It is enough to know that if there was fraud and the property belonged to Fredericks, and was covered up by the plaintiff, it simply affected the question of title, which fact is found in favor of plaintiff. It will be seen that the only finding on the subject offered was that the holding of the property by plaintiff was a trick and device, &c. This the court could not find, and this is what it was requested to do. Had defendant requested the court to find whether or not it was a trick and device, and such finding was not covered in the determination of the right of property, there might be something in appellants' points.

3. It will be seen that the defendants did not request the court to find the value of the lumber and shingles in accordance with section 220, Pr. Act, but the court, on its own motion, did so find. (See record, page 121.)

4. The question of ownership of the mill had nothing to do with the right to the flour. It could make no difference whether the mill was the property of plaintiff or Davis. But it will be seen from the
179 record that defendant went into this question, and the evidence offered by plaintiff was in rebuttal of this immaterial fact. The judgment, however, in which the title to the mill was determined was competent under the rules of evidence. (See Freeman on Judgments, page 291, sec. 328. See Sage vs. Harpending, 49 Barbour, page 166; Harris vs. Hammond, 18 Howard, page 123; Burton vs. Burton, 28 Indiana, 342; Hill vs. Campant, 16 Indiana, 107; Bank vs. Wheeler, 28 Connecticut, 433; Curtis vs. Beardsly, 15 Conn., 518.)

5. Besides, there was no conflict in the evidence. It all showed that Davis, the real party in interest, conveyed the mill to plaintiff, which was exchanged for the one referred to, and advised her to get out her sole-trader papers. (See 52 Barbour, 26; 4 Cowan, 406; 3 John., ch. 354; 5th Wendell, 661.)

6. No objection to this evidence was made on account of the judgment being between different parties. If such objection could be entertained Davis was the real party in interest, and Clark was only an agent. (See Lomme vs. Sweeny, 1 Blake, 598; 22 Wall., 208.)

7. So far as the evidence is concerned it fully supports the case of plaintiffs.

180 8. It will be seen that plaintiff was in possession at the time of the seizure. This was all that was necessary for her to show, as she was not the judgment debtor. (See 3 Barb., 110, Merritt vs. Lyon.)

9. This being the case, the cross-examination sought by defendant was improper. Besides, the order of proof is a matter of discretion with the court, and defendants had the full benefit of an examination of the witness in rebuttal. (See record.)

J. H. SHOBER AND E. W. TOOLE,
Att'ys for Resp'd'ts.

And afterwards, to wit, on the 24th day of January, A. D. 1878, the said cause came on to be heard before the court upon the transcript of record filed herein, and was argued by counsel and submitted. Thereupon the court took said cause under advisement until the next term of this court.

In the supreme court of the Territory of Montana, August term, A. D. 1878.

SARAH J. FREDERICKS ET AL.
vs.
CHARLES L. CLARK ET AL.

181 This cause having been argued and submitted at the January term, A. D. 1878, of this supreme court, and the same having been taken under advisement by the court until this present term, comes regularly on, on this 14th day of August, A. D. 1878, for determination on appeal. Whereupon the court delivers its opinion in writing, which is filed and entered of record, said opinion being in words and figures following, to wit:

In the supreme court of the Territory of Montana, January term, 1878.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs and respondents,
vs.
CHARLES L. CLARK AND ANDREW. J. DAvis, defendants and appellants.

Appeal from Gallatin County, first district.

Opinion of the court delivered by Wade, chief justice.

The ownership of certain flour and lumber attached by the defendant Davis as the property of W. A. Fredericks, one of the plaintiffs, and replevied by Sarah J. Fredericks, wife of the said W. A. Fredericks, as her own separate property, is involved herein; the defense resting chiefly upon the allegation that W. A. Fredericks was the owner
182 of the undivided one-half of a certain flouring-mill; that for the purpose of hindering, delaying, and defrauding his creditors he caused the same to be conveyed to his wife, Sarah J. Fredericks; that the flour and lumber in question were the profits and proceeds of such mill after such conveyance, and therefore the property of the husband; and this claim of fraud in such conveyance having been set at rest in the case of Fredericks vs. Davis and Gilbert, decided at this term (3 Mon., page), wherein it was finally determined and adjudged that Sarah J. Fredericks, by virtue of the conveyance aforesaid, became the bona fide owner of the undivided one-half of said mill, and as such owner entitled to partition thereof, there is not much left to try in this action.

The case was tried to the court without a jury, and one of the errors complained of by the defendant is that the findings of fact do no cover the issue of fraud raised in the pleadings. Undoubtedly the findings should be as broad as the issues. The defendant having charged that the plaintiff Sarah J. Fredericks held and claimed the property mentioned in the complaint in order to cover it up, and for the purpose of cheating and defrauding the creditors of her husband, and the court having found that said Sarah J. Fredericks was the owner of the property as sole trader, and that the same was wrongfully seized by
183 the defendant Clark, sheriff, as the property by her husband, at the suit of Davis, we do not see but the finding is as broad as the issue, and conclusively covers the question of fraud raised in the pleadings.

2. The case of Fredericks vs. Davis and Gilbert, wherein title to the mill property had been adjudicated, was determined in the district court, and an appeal to the supreme court pending therein, when the pleadings, record, and judgment roll in that case were admitted in evidence in this one to rebut the attack of the defendant on the title of plaintiff, and such admission is assigned as error. If this had been error it is not such an one as ought to reverse the case, for since the affirmation in the supreme court of the judgment so introduced, whereby upon a second trial such judgment would become competent evidence, a reversal of the case would work no advantage to the defendant. But we do not think that an appeal may be considered as suspending the operation of a judgment so that it is not admissible as evidence in any controversy between the parties. Until reversed or annulled the judgment is binding upon the parties, as to every question decided, directly, and an appeal, with a proper bond, to stay proceedings only suspends
184 the right to execution. "If the appeal is in the nature of a writ of

3. It will be seen that the defendants did not request the court to find the value of the lumber and shingles in accordance with section 220, Pr. Act, but the court, on its own motion, did so find. (See record, page 121.)

4. The question of ownership of the mill had nothing to do with the right to the flour. It could make no difference whether the mill was the property of plaintiff or Davis. But it will be seen from the
179 record that defendant went into this question, and the evidence offered by plaintiff was in rebuttal of this immaterial fact. The judgment, however, in which the title to the mill was determined was competent under the rules of evidence. (See Freeman on Judgments, page 291, sec. 328. See Sage vs. Harpending, 49 Barbour, page 166; Harris vs. Hammond, 18 Howard, page 123; Burton vs. Burton, 28 Indiana, 342; Hill vs. Campant, 16 Indiana, 107; Bank vs. Wheeler, 28 Connecticut, 433; Curtis vs. Beardsly, 15 Conn., 518.)

5. Besides, there was no conflict in the evidence. It all showed that Davis, the real party in interest, conveyed the mill to plaintiff, which was exchanged for the one referred to, and advised her to get out her sole-trader papers. (See 52 Barbour, 26; 4 Cowan, 406; 3 John., ch. 354; 5th Wendell, 661.)

6. No objection to this evidence was made on account of the judgment being between different parties. If such objection could be entertained Davis was the real party in interest, and Clark was only an agent. (See Lomme vs. Sweeny, 1 Blake, 598; 22 Wall., 208.)

7. So far as the evidence is concerned it fully supports the case of plaintiffs.

180 8. It will be seen that plaintiff was in possession at the time of the seizure. This was all that was necessary for her to show, as she was not the judgment debtor. (See 3 Barb., 110, Merritt vs. Lyon.)

9. This being the case, the cross-examination sought by defendant was improper. Besides, the order of proof is a matter of discretion with the court, and defendants had the full benefit of an examination of the witness in rebuttal. (See record.)

J. H. SHOBER AND E. W. TOOLE,
Att'ys for Resp'd'ts.

And afterwards, to wit, on the 24th day of January, A. D. 1878, the said cause came on to be heard before the court upon the transcript of record filed herein, and was argued by counsel and submitted. Thereupon the court took said cause under advisement until the next term of this court.

In the supreme court of the Territory of Montana, August term, A. D. 1878.

SARAH J. FREDERICKS ET AL.
vs.
CHARLES L. CLARK ET AL.

181 This cause having been argued and submitted at the January term, A. D. 1878, of this supreme court, and the same having been taken under advisement by the court until this present term, comes regularly on, on this 14th day of August, A. D. 1878, for determination on appeal. Whereupon the court delivers its opinion in writing, which is filed and entered of record, said opinion being in words and figures following, to wit:

In the supreme court of the Territory of Montana, January term, 1878.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs and respondents,
vs.
CHARLES L. CLARK AND ANDREW. J. DAVIS, defendants and appellants.

Appeal from Gallatin County, first district.

Opinion of the court delivered by Wade, chief justice.

The ownership of certain flour and lumber attached by the defendant Davis as the property of W. A. Fredericks, one of the plaintiffs, and replevied by Sarah J. Fredericks, wife of the said W. A. Fredericks, as her own separate property, is involved herein; the defense resting chiefly upon the allegation that W. A. Fredericks was the owner
182 of the undivided one-half of a certain flouring-mill; that for the purpose of hindering, delaying, and defrauding his creditors he caused the same to be conveyed to his wife, Sarah J. Fredericks; that the flour and lumber in question were the profits and proceeds of such mill after such conveyance, and therefore the property of the husband; and this claim of fraud in such conveyance having been set at rest in the case of Fredericks vs. Davis and Gilbert, decided at this term (3 Mon., page), wherein it was finally determined and adjudged that Sarah J. Fredericks, by virtue of the conveyance aforesaid, became the bona fide owner of the undivided one-half of said mill, and as such owner entitled to partition thereof, there is not much left to try in this action.

The case was tried to the court without a jury, and one of the errors complained of by the defendant is that the findings of fact do no cover the issue of fraud raised in the pleadings. Undoubtedly the findings should be as broad as the issues. The defendant having charged that the plaintiff Sarah J. Fredericks held and claimed the property mentioned in the complaint in order to cover it up, and for the purpose of cheating and defrauding the creditors of her husband, and the court having found that said Sarah J. Fredericks was the owner of the property as sole trader, and that the same was wrongfully seized by
183 the defendant Clark, sheriff, as the property by her husband, at the suit of Davis, we do not see but the finding is as broad as the issue, and conclusively covers the question of fraud raised in the pleadings.

2. The case of Fredericks vs. Davis and Gilbert, wherein title to the mill property had been adjudicated, was determined in the district court, and an appeal to the supreme court pending therein, when the pleadings, record, and judgment roll in that case were admitted in evidence in this one to rebut the attack of the defendant on the title of plaintiff, and such admission is assigned as error. If this had been error it is not such an one as ought to reverse the case, for since the affirmation in the supreme court of the judgment so introduced, whereby upon a second trial such judgment would become competent evidence, a reversal of the case would work no advantage to the defendant. But we do not think that an appeal may be considered as suspending the operation of a judgment so that it is not admissible as evidence in any controversy between the parties. Until reversed or annulled the judgment is binding upon the parties, as to every question decided, directly, and an appeal, with a proper bond, to stay proceedings only suspends
184 the right to execution. "If the appeal is in the nature of a writ of

error, conferring power on the appellate court to determine such errors as may have occurred at the trial or in the decision of the cause, and giving the court upon such determination no other authority than that of reversing, modifying, or affirming the judgment of the inferior court, and of remitting the case back to the tribunal whence it came, that such tribunal may conform its judgments and proceedings to the views of its superior, then the judgment appealed from does not, until vacated or reversed, cease to operate as a merger and bar." (Freeman on Judgments, sect. 328, and cases cited.)

There was no objection to the judgment because it was not between the same parties, nor could such objection have been made, for it was between the same parties in interest, and determined the title to the mill property as between W. A. and Sarah J. Fredericks, the very question that Davis sought by his attack upon the title of Sarah J. to have tried again in this action.

3. The defendant, as often happens, sought to make out his defense on the cross-examination of plaintiffs' witness. The refusal to permit this where the examination-in-chief had not opened the door was
185 not error. Even if the defendant had been entitled to the proposed cross-examination of Sarah J. Fredericks he was not in any manner injured, for when she came again to the witness stand in rebuttal the examination took place, and, juding from her testimony, covered all the questions proposed upon her former examination.

The judgment is affirmed, with costs.

DECIUS S. WADE,
Chief Justice.
HIRAM KNOWLES,
Asso. Justice.
HENRY N. BLAKE,
Asso. Justice.

Thereupon judgment on appeal was entered in this cause in the following words, to wit:

Judgment on appeal.

In supreme court, Aug. term, 1878.

SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, plaintiffs and respondents,
vs.
CHARLES L. CLARK AND ANDREW J. DAVIS, defendants and appellants.
} 270.

Whereas in the present term of August, in the year of our Lord one thousand eight hundred and seventy-eight, this cause came on in said supreme court for determination on appeal; whereupon it is now
186 here ordered and adjudged by this court that the findings and judgment of the district court of the first judicial district of this Territory, in and for the county of Gallatin, entered in this cause on the 30th day of October, A. D. 1877, be, and the same is hereby, affirmed, with costs. And it is further ordered by this court that the said plaintiffs, Sarah J. Fredericks and Wellington A. Fredericks, respondents herein, recover against the said defendants and appellants, Charles L. Clark and Andrew J. Davis, dollars, for their costs herein expended, and have execution therefor.

Judgment on appeal entered Aug. 14, 1878.

And thereafter, to wit, on the 19th day of August, A. D. 1878, this cause came on to be heard before the court on the application of appellant Davis for a writ of error herein to remove said cause to the Supreme Court of the United States; whereupon it is ordered that such writ of error be allowed, and that the penalty of the bond on appeal to accompany such writ be, and the same is hereby, fixed at the sum of five thousand dollars.

187 And on the 23rd day of August, A. D. 1878, the said appellant, Andrew J. Davis, filed in the clerk's office of the supreme court of Montana Territory his writ of error to remove this cause to the Supreme Court of the United States, which said writ of error is in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the Territory of Montana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court before you between Sarah J. Fredericks and Wellington A. Fredericks, plaintiffs, and Andrew J. Davis and Charles L. Clark, defendants, a manifest error hath happened to the great damage of the said Andrew J. Davis and Charles L. Clark, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

188 together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable M. R. Waite, Chief Justice of the said Supreme Court, the second Monday of October, in the year of our Lord one thousand eight hundred and seventy-eight.

{ SEAL OF SUP. C'T, M. T. } I. R. ALDEN,
Clerk of the Supreme Court Montana Territory.

Allowed by—

DECIUS S. WADE,
Chief Justice of Supreme Court Montana Territory.

And on the same day, to wit, the 23rd day of August, A. D. 1878, the said appellant filed herein his citation, of which, with the affidavit of service thereof endorsed thereon, the following is a copy, to wit:

Citation.

SARAH J. FREDERICKS AND WILLINGTON A. Fredericks,
vs.
ANDREW J. DAVIS AND CHARLES L. CLARK.

189 The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Montana, wherein Andrew J. Davis and Charles L. Clark are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable D. S. Wade, chief justice of the supreme court of the Territory of Montana, this 23rd day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

{ SEAL OF SUPREME C'T, M. T. } DECIUS S. WADE,
Chief Justice.

Endorsement of service.

I hereby certify and return that on the 26th day of August, 1878, in my district, to wit, at Helena, in the county of Lewis and Clarke, and Territory of Montana, I personally served the within citation on
190 E. W. Toole, esq., one of the attorneys of the defendants in error herein, by showing the same to him, with the seal of the court attached, and at the same time delivering to and leaving with him a true copy thereof.

Dated Helena, M. T., Aug. 26, 1878.

ALEX. C. BOTKIN,
U. S. Marshal, Dist. of Montana.

Fees: Service, $2.00; copy, 20—$2.20.

And on the same day, to wit, the 23rd day of August, A. D. 1878, the said appellant Andrew J. Davis filed herein his bond, with sureties as required by law, to accompany the writ of error in this cause, in the sum of five thousand dollars, the penalty fixed by the order of court made and entered August 19, 1878, of which said bond, in words and figures, the following is a copy, to wit:

Know all men by these presents that we, Andrew J. Davis, as principal, and Samuel T. Hauser, and Anton M. Holter, as sureties. are held and firmly bound unto Sarah J. Fredericks and Wellington A. Fredericks in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Sarah J. Fredericks and
191 Wellington A. Fredericks, their executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the twenty-first day of August, A. D. one thousand eight hundred and seventy-eight.

Whereas lately in a suit, at the August term of the supreme court of the Territory of Montana, depending in said court between Sarah J. Fredericks and Wellington A. Fredericks, plaintiffs, and Andrew J. Davis and Charles L. Clark, judgment was rendered against the said Andrew J. Davis and Charles L. Clark, and the said Andrew J. Davis and Charles L. Clark has sued out a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Sarah J. Fredericks citing and admonishing her to be and appear at a Supreme Court of the United States to be holded at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said Andrew J. Davis and Charles L. Clark shall prosecute their said writ of error with effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be
192 void, else to remain in full force and virtue.

A. J. DAVIS. [SEAL.]
S. T. HAUSER. [SEAL.]
A. M. HOLTER. [SEAL.]

Signed, sealed, & delivered in the presence of—

Approved by—

DECIUS S. WADE,
Chief Justice of the Supreme Court of Montana Territory.

TERRITORY OF MONTANA,
Lewis and Clarke County, ss:

Samuel T. Hauser and Anton M. Holter, being first severally duly sworn, each for himself, deposes and says that he is worth the sum named in the within bond as the penalty thereof, over and above all his just debts, liabilities, and exemptions, and that he is a resident and freeholder in the Territory aforesaid.

S. T. HAUSER.
A. M. HOLTER.

Subscribed and sworn to before me, this 23rd day of August, A. D. 1878.

[NOTARIAL SEAL.] WM. CHUMASERO,
Notary Public.

193 In the supreme court, Montana Territory, August term, A. D. 1878.

CHARLES L. CLARK AND ANDREW J. DAVIS, plaintiffs in error,
vs.
SARAH J. FREDERICKS AND WELLINGTON A. Fredericks, defendants in error.

I, I. R. Alden, clerk of the supreme court of Montana Territory, do hereby certify that the foregoing one hundred and ninety-two pages, numbered from one to one hundred and ninety-two, contain a full, true, and correct transcript of certain pleadings, records, and proceedings filed, made, and had in the above-entitled action, as the same appear on file and of record in my office.

Witness my hand and the seal of said court, this first day of October, A. D. 1878.

[SEAL.] I. R. ALDEN, *Clerk.*

(Indorsement on cover:) No. 178. Andrew J. Davis and Charles L. Clark, plaintiffs in error, vs. Sarah J. Fredericks and Wellington A. Fredericks. Montana Territory, supreme court. Filed 19th April, 1879.

FILED
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JAMES

Supreme Court of the United States.

No. 178.

ANDREW J. DAVIS AND CHARLES L. CLARK,
PLAINTIFFS IN ERROR,

vs.

SARAH J. FREDERICKS AND W. A. FREDERICKS.

In Error to the Supreme Court of the Territory of Montana.

BRIEF FOR PLAINTIFFS IN ERROR.

R. T. MERRICK,
M. F. MORRIS,
Of Counsel for Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

No. 178.

ANDREW J. DAVIS AND CHARLES L. CLARK,
PLAINTIFFS IN ERROR,

vs.

SARAH J. FREDERICKS AND W. A. FREDERICKS.

In Error to the Supreme Court of the Territory of Montana.

BRIEF FOR PLAINTIFFS IN ERROR.

I.

STATEMENT OF CASE.

This cause grows out of the same controversy that is involved in No. 177 immediately preceding; and is a consolidation of two suits into one.

Davis, one of the plaintiffs in error, having obtained a judgment against Wellington A. Fredericks, one of the defendants in error, caused a writ of attachment, by way of execution, to be issued and placed in the hands of his co-plaintiff, Charles L. Clark, the sheriff of Gallatin county, in the Territory of Montana. The sheriff levied upon some flour, wheat, shingles, and lumber, alleged to be in fact the property of the judgment debtor, W. A. Fredericks, but

claimed by his wife and co-defendant in error, Sarah J. Fredericks, to belong to her in her own right.

These suits were thereupon instituted, one in the name of Sarah J. Fredericks alone, and the other in the name of herself and her husband, to recover from the sheriff the property seized by him, or its value.

The main issue, therefore, was the question of the ownership of the property.

The consolidated cases were submitted to the district court without a jury, which was waived under the statute of Montana; and the court found the issue generally in favor of the defendants in error, the plaintiffs below.

The Supreme Court of the Territory affirmed that decision; and the cause is now here on writ of error to the judgment of the Territorial Supreme Court.

The refusal of the district court to permit certain questions propounded by counsel for Davis to Mrs. Fredericks, when the latter was on the stand as a witness, to be answered by her; (Record, pp. 11, 12;) and its refusal to make its findings of fact distinct from its conclusions of law, (Record, pp. 51, 52, 53,) are the principal causes of grievance on the part of the plaintiffs in error.

II.

ASSIGNMENT OF ERRORS.

1. There was error in the ruling of the court below in excluding, upon cross-examination, the question of counsel for Davis to Mrs. Fredericks, inquiring when she got the flour levied on, and as to her ownership of which she had testified in chief. (Record, p. 11.)

2. There was error in the ruling of the court below in excluding, upon cross-examination, the question propounded to Mrs. Fredericks, how and in what manner she had acquired title to and possession of the flour described in the complaint. (Record, p. 11.)

3. There was error in the ruling of the court below in excluding, upon cross-examination, the other questions propounded to Mrs. Fredericks touching the time and place of the manufacture of the flour, and whether the grain, from which it was manufactured, was not owned by her husband. (Record, pp. 11, 12.)

4. There was error in the finding of the court below, inasmuch as it did not separate the finding of fact from its conclusion of law. (Record, pp. 51, 52.)

5. It was error in the court below to refuse to find the distinct facts requested by the defendant, Davis.

III.

BRIEF OF ARGUMENT.

1.

It does not appear upon what principle of law or rule of evidence, the questions asked of Mrs. Fredericks on cross-examination, in regard to the time and manner and circumstances of her obtaining the flour levied on, were excluded by the court below. (Record, pp. 11, 12.)

The question at issue, indeed the sole question at issue, was the ownership of the chattels levied on by the sheriff. Mrs. Fredericks had testified, in chief, that she was the owner of these chattels as a sole trader; and assuredly it was competent, upon cross-examination, to ask her when, and how, and under what circumstances, she had acquired that ownership. No citation of authorities seems necessary to sustain so plain a proposition as that.

And yet the Supreme Court of the Territory, in its opinion (Record, p. 72) says that the examination in chief had not opened the door for such cross-examination.

With all due respect to that tribunal, it seems to us to have been plainly in error in that assertion.

But neither the district court nor the plaintiffs below seem to have been so confident on this point. For Mrs. Fredericks was recalled to the witness stand (Record, p. 17;) and because, in the language of the opinion cited, (Record, p. 72,) "when she came again to the witness stand in rebuttal the examination took place, and, *judging from her testimony, covered all the questions* proposed upon her former examination," the defendant (Davis) "was not in any manner injured."

But the mischief had already been done. The defendants below were entitled to the proposed testimony in the course of the examination in chief, and before their own testimony was put in; and it was an injustice to them to be confronted with it for the first time in rebuttal, even if it be a fact that the questions were then actually put and allowed—which is mere matter of inference.

2.

The law of Montana, which authorizes the waiver of a jury by parties and the trial by the court of issues of fact at common law, like most other similar statutes, requires the Court to make its findings of facts distinct and separate from its conclusions of law.

The statute upon the subject, which is to be found in the Codified Statutes of Montana, session of 1871, 1872, page 70, 71, is as follows:

"Upon a trial of an issue of facts by the court, judgment shall be entered in accordance with the finding of the court, and the finding, if required by either party, shall be reduced to writing, and filed with the clerk. *In the finding filed, the facts found and the conclusions of law shall be separately stated.* In such cases, no judgment shall be reversed on appeal for want of a finding in writing, at the instance of any party who, at the time of the submission of the cause, shall not have requested a finding in writing, and had such entered on the minutes of the court; nor in cases tried by a court,

by a commissioner or a referee, shall the judgment be reversed on appeal for defects in the finding, unless exceptions be made in the court below for a defect in the finding; and in case of exceptions for defective findings, the particular point or issue upon which the party requires a finding to be made, or a defect to be remedied, shall be specifically and particularly designated; and upon failure of the court to remedy, or when tried by a commissioner or referee, to cause to be remedied, by such commissioner or referee the alleged defect, the party moving shall be entitled to his exceptions, and the same shall be settled by the judge as in other cases: *Provided*, that such exceptions shall be filed in the court and served on the attorney of the adverse party within five days after receiving from or giving to the adverse party written notice of the filing and finding."

The action of the district court of Montana in the present case (Record, p. 51,) is plainly in violation of this statute. The finding is "that the plaintiff, Sarah J. Fredericks, was the owner of the property mentioned in the complaint, as sole trader, and that the defendant, Charles L. Clark, did wrongfully take of said property"—a statement of mingled law and fact, such as the statute was clearly intended to prevent.

The decisions of this Court in regard to the proceedings of the Court of Claims, in respect of which tribunal a provision exists under the rules of this Court for the regulation of appeals therefrom, should be conclusive upon this point.

Mahan *vs.* U. S., 14 Wallace, 109.

U. S. *vs.* Clark, 94 U. S., 93.

It would seem that this objection was perceived by the counsel for the appellees, when the case was before the supreme court of Montana for argument; and we find that, pending the appeal in that court, an attempt was made to remedy the defect in the findings of the district court.

The judgment in the district court was rendered on the 30th of October, 1877. (Record, pp. 51, 52.)

The appeal to the supreme court of the Territory was taken on the 1st of November, 1877. (Record, pp. 63, 64.)

While the case was in the last mentioned court, on the 21st of January, 1878, a paper purporting to be a "supplemental record," and to contain "findings of facts" made by the district court on the 31st of November, 1877, was filed in the supreme court. (Record, pp. 66, 67.)

This so-called supplemental record and finding of facts were plainly *coram non judice*. The case was not in the district court at the time they purport to have been made. Even consent of parties could not then have given jurisdiction to the district court to make such findings; and there is no evidence of consent. For neither the recital at the beginning of these supplemental findings, nor the fact that this so-called supplemental record was exhibited in the supreme court by the appellants, is any evidence of consent to the assumption of jurisdiction by the district court.

3.

Moreover, if the decree in Cause No. 177 should be reversed and the cause remanded to the Territorial courts, the judgment in this case should also be reversed, though, for the reasons already stated, and which are independent of Cause No. 177, the converse of this proposition would not be correct.

The judgment roll in Cause No. 177 seems to have been, in some inexplicable manner, introduced into this case (Record, p. 55–61)—for what purpose, in what connection, or at what point of the case we cannot tell, except so far as may be inferred from the opinion of the supreme court, (Record, p. 71;) and this evidence seems to have influenced the decision to a considerable extent. If that case is found to have been improperly decided, it should not be allowed to have its effect in this case by the affirmance of the present judgment; while, as it is neither pleaded nor offered in

evidence as an estoppel, the affirmance of the decree in No. 177 would not be sufficient to dispose of this case.

4.

It is submitted that, because of the confusion of the findings of fact with the conclusions of law by the territorial courts, and for the other errors specified, the judgment should be reversed and the cause remanded for a new trial.

R. T. MERRICK,
M. F. MORRIS,
Of Counsel for Plaintiffs in Error.

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DEC
JAMES

IN THE

Supreme Court of the United States.

No. 178.

ANDREW J. DAVIS AND CHARLES L. CLARK,
Plaintiffs in Error,

vs.

SARAH J. FREDERICKS & WELLINGTON A. FREDERICKS,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

BRIEF ON BEHALF OF THE DEFENDANTS IN ERROR,

By SHELLABARGER & WILSON.

Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

ANDREW J. DAVIS AND CHARLES L. CLARK, PLAINTIFFS IN ERROR,

vs.

SARAH J. FREDERICKS AND WELLINGTON A. FREDERICKS, DEFENDANTS IN ERROR.

No. 178.

BRIEF FOR THE DEFENDANTS IN ERROR.

I. As the questions made by the plaintiff Davis in this case all go to the establishment of the proposition that Mrs. Fredericks did *not* and her husband *did* own the property replevied by her, and as the question who owned the property replevied was made by the defendant Davis to turn wholly on who owned the half of the flouring-mill which is litigated in 177 on this court's docket, it becomes evident that what the court below said, (R. 71, fol. 182,) that "there is not much left in this action" to be decided should this court affirm the judgment in 177, is true. This is because in case of such affirmance the judgment in 178 was right, independently of the errors herein assigned; and

Hence this cross-examination was not only a departure from what had been touched on in chief, but was an attempt to introduce, by this cross-examination, the defendant's defense, to wit, that such defendant had a right to this property because it was the earning of a mill which Mrs. Fredericks had paid for with property Davis had deeded to her in fraud of her husband's creditors. This range of cross-examination is not allowed. This court says: "The rule has been long *settled* that the cross-examination of a witness must be limited to matters stated in his direct examination." (Houghton *v.* Jones, 1 Wall., 706; see also 14 Pet., 448.)

But whether this is so or not, Davis was allowed (R. 17) to ask Mrs. Fredericks as to *every* point to which the excluded questions on pages 11 and 12 refer, and hence he was not injured. (20 Wall., 542.)

The point in the opposing brief says he was injured because Mrs. Fredericks so testified only after Davis's evidence was put in. But the reply to this is that the *order* of the delivery of the testimony is a matter always subject to the discretion of the court.

It was perfectly competent for Davis, after Mrs. Fredericks had so testified, to ask the court to allow him to meet the evidence of Mrs. Fredericks as last delivered. It was equally competent for the court to grant that request. Not having so requested, he cannot now say that he was injured by the fact that Mrs. Fredericks's evidence (R. 17) was delivered out of time.

See Railroad Co. *v.* Stimpson, 14 Pet., 463.

This mischief, if a "mischief" at all, as the opposing brief says it was, was one Davis could readily have cured by asking the court to allow him to call witnesses to contradict what he drew out of Mrs. Fredericks on cross-examination, (R. 17, fols. 45 and 46,) and which certainly covers everything pointed at in the overruled questions on pages

11 and 12. Any "mischief" which was, like this, remediable so easily in the court below by simply asking the court to remedy it, is waived if the request is not made.

7 Wall., 570; 8 Wall., 353, 354; 2 Wall., 258.

Again, without arguing the point, we submit that the bill of exceptions does not raise or present sufficiently the points as to either points assigned for error.

We have already remarked on the want of specified objections on the trial below to the character of the court's findings. We now add that both on general principles and by the statutes of Montana it is the duty of parties to incorporate into the bill of exceptions *itself* their objections, with so much of the matter to which the ruling relates as shall show its exact character. In the present case the bill of exceptions, which commences on page 57, R., fol. 147, and ends on page 63, R., fol. 163, contains no statement showing anything regarding the character of exceptions to or rulings upon Mrs. Fredericks's evidence. It is only alluded to as found in another part of the papers, (see R. 61, fol. 157,) on pages 25 to 31.

We know not what that matter is which begins R. 10, fol. 25, under head of "Plaintiff's Testimony." We know not by what statute it is put into the record, it not being any part of the bill of exceptions. We submit that it is not competent to make up a bill of exceptions in this way—by referring, in it, to some paper unknown to the law and the records of the court, as a thing which will help out and supply what the statute says shall be in the bill of exceptions itself.

V. If the fifth assignment of errors (Brief 3) means to object that there is error in the court having failed to find that the evidence establishes what Davis claimed it did, (R. 52, 53,) then that assignment is, in this view, worthless, as the court does not retry facts in cases like this. If

the assignment means to say that the court erred in failing to pass, one way or the other, upon the set of facts Davis set down as to be found, then our reply to the point is—

(1.) That which we have above given, to wit, that the request found on pages 52–3 is one which simply satisfies the clause of the statute which requires one desiring to review the court's finding to have a minute entered of a request for written findings. (See p. 4, opposing brief.) And it does not satisfy the *additional* provision in the same section, which prevents any one from taking exceptions to a written finding by the court, who, after he has seen such written finding "fails particularly to designate the defect to be remedied." Said request (R. 52) may satisfy the part of the clause which requires the "point or issue" on which a finding is asked to be designated, but it is not sufficient designation of the alleged defect that findings of law and fact are blended.

(2) The court has passed upon all the facts put in issue by the pleading. (R. 52, 53, 58, 59.)

VI. The opposing brief of appellants seeks to get clear of the act of appellants in presenting and securing the action of the Supreme Court upon the "supplemental record," which appears at pages 66 and 67.

The ground upon which appellants seek to repudiate in this court their act in procuring such additional findings to be filed is, that they allege the case was in the Supreme Court on appeal on the day (31st of November, 1877) when the District Court attempted to make the new finding of facts.

Though notice of appeal from the judgment was given 1st November, 1877, (R. 64,) no transcript on appeal was asked for until 15th of December, 1877. (R. 65.) So that the case was not removed at the date given in the "supplemental record," to wit, 31st of November, 1877;

and we submit it was competent for the judge then to amend his findings by consent of parties, and file them *nunc pro tunc*. Besides, the clerk (R. 67) certifies that this is "a full, true, and correct copy of the court's finding of facts in that case," and that it was omitted from the original transcript.

This court must, we think, treat this as a proper part of the record and the true findings in the case. Davis cannot take exceptions to action of the court invited and induced by himself. But we do not deem this matter at all material, because whichever findings are treated as the true ones, they (in so far as defects are not waived as shown above) sufficiently find all facts involved in the issues made by the pleadings.

SHELLABARGER & WILSON,
Att'ys for Def'ts in Error.